

No. 39567-3-II

COURT OF APPEALS, DIVISION II  
FOR THE STATE OF WASHINGTON

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STEPHEN CHANDLER and KIM O'NEILL,  
Plaintiffs,

and

JOHN KUHLMAN and JANE DOE KUHLMAN, husband and wife; TIM  
SELFRIDGE and JANE DOE SELFRIDGE, husband and wife; and  
WINDERMERE REAL ESTATE/STELLAR GROUP, MORTGAGE  
ELECTRONIC REGISTRATION SYSTEM, INC., FIRST AMERICAN  
TITLE COMPANY, AND CHASE MANHATTAN BANK USA,  
Defendants.

JOHN KUHLMAN and JULIE KUHLMAN, husband and wife,  
Appellant/Third-Party Plaintiffs,

v.

DAN I. CARLSON and PATRICIA J. CARLSON, husband and wife,  
Respondent/Third-Party Defendants.

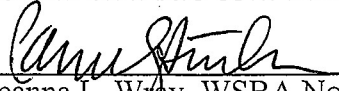
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On Appeal from the Cowlitz County Superior Court

**APPELLANTS' OPENING BRIEF**

**BODYFELT MOUNT LLP**



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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	ASSIGNMENTS OF ERROR .....	2
III.	ISSUES PERTAINING TO ASSIGNMENTS OF ERROR .....	2
IV.	STATEMENT OF THE CASE.....	3
A.	FACTUAL BACKGROUND .....	3
1.	Property Ownership .....	3
2.	Boundary Discrepancy .....	4
B.	PROCEDURAL BACKGROUND.....	6
V.	ARGUMENT .....	7
A.	STANDARD OF REVIEW .....	7
B.	GENUINE ISSUES OF MATERIAL FACTS PREVENTED SUMMARY JUDGMENT FROM BEING ENTERED IN FAVOR OF CHANDLERS.....	8
C.	THE CHANDLERS DID NOT PRESENT UNDISPUTED EVIDENCE TO ESTABLISH A BOUNDARY LINE THROUGH THE COMMON GRANTOR DOCTRINE .....	11
D.	THE CHANDLERS DID NOT PRESENT CLEAR, COGENT AND CONVINCING EVIDENCE TO ESTABLISH A BOUNDARY LINE THROUGH ACQUIESCENCE.....	15
VI.	CONCLUSION.....	19



## TABLE OF AUTHORITIES

### Cases

<i>Barrie v. Hosts of Am., Inc.</i> , 94 Wn.2d 640, 618 P.2d 96 (1980) .....	8
<i>Chaplin v. Sanders</i> , 100 Wn.2d 853, 676 P.2d 431 (1984) .....	16
<i>City of Lakewood v. Pierce County</i> , 144 Wn.2d 118, 30 P.3d 446 (2001) .....	8
<i>Fralick v. Clark County</i> , 22 Wn.App. 156, 589 P.2d 273 (1978) .....	11, 12, 14
<i>Hisle v. Todd Pac. Shipyards Corp.</i> , 151 Wn.2d 853, 93 P.3d 108 (2004) .....	8
<i>Houplin v. Stoen</i> , 72 Wn.2d 131, 431 P.2d 998 (1967) .....	17, 18
<i>Johnston v. Monahan</i> , 2 Wn.App. 452, 469 P.2d 930 (1970) .....	17
<i>Kruse v. Hemp</i> , 121 Wn.2d 715, 853 P.2d 1373 (1993) .....	8
<i>Lamm v. McTighe</i> , 72 Wn.2d 587, 434 P.2d 565 (1967) .....	15, 18
<i>Muench v. Oxley</i> , 90 Wn.2d 637, 584 P.2d 939 (1978) .....	16, 17
<i>Scott v. Slater</i> , 42 Wn.2d 366, 255 P.2d 377 (1953) .....	16
<i>Waldorf v. Cole</i> , 61 Wn.2d 251, 377 P.2d 862 (1963) .....	16

### Treatises

17 William B. Stoebuck, Washington Practice: Real Estate: Property Law § 8.21, at 544 (2nd ed. 2004) .....	7
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## I. INTRODUCTION

This is a property line dispute between residential neighbors. Prior to 1974, Harry and Audrey Axtell owned two adjoining parcels of land commonly known as 109 and 117 River Glen Terrace, Kalama, Washington. The parcels both extend to the center of the Kalama River in the west. The Axtells sold 109 River Glen Terrace to Frank Bishop and his wife in 1974. The Axtells sold 117 River Glen Terrace to Dan and Pat Carlson in 1980. The Bishops and Carlsons lived as neighbors for 21 years, until the Carlsons sold 117 River Glen Terrace to John and Julie Kuhlman in 2001. In 2005, the Bishops sold 109 River Glen Terrace to Stephen Chandler and his wife, Kim O'Neill ("the Chandlers"). A dispute arose between the Chandlers and Kuhlman as to the boundary line between their properties. The Chandlers sued to Quiet Title.

The dispute arises from the difference in the boundary description contained in the deeds that conveyed the property from the Axtells to the Bishops and Carlsons, as opposed to a purported surveyor's mark determined in 1974 by the Bishops' surveyor, and reiterated verbally from the Bishops to the Chandlers some 31 years later. The Chandlers rely on the property line described to them orally by the Bishops. The Kuhlman rely upon the written legal descriptions contained in the deeds from the Axtells to both the Bishops and Carlsons.

## II. ASSIGNMENTS OF ERROR

1. The trial court erred in granting the Chandlers' motion for summary judgment by order dated May 15, 2009, and ultimately entering judgment in the Chandlers' favor on June 26, 2009.

2. The trial court erred in denying the Kuhlmanns' motion for summary judgment by order dated May 15, 2009, and ultimately entering judgment in the Chandlers' favor on June 26, 2009.

## III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Do the written descriptions in the recorded warranty deeds establish the boundaries between the properties? (Assignment of Error No. 2)

B. Are there one or more genuine issues of material fact preventing the grant of plaintiffs' motion for summary judgment? (Assignment of Error No. 1)

C. Is a non-visible, non-straight line between three points – a rock, a tree and an iron stake – sufficient evidence to support an adjustment to the written legal boundary in the deed under the common grantor doctrine? (Assignment of Error No. 1)

D. Is boundary by acquiescence established by clear, cogent and convincing evidence when there is no visible boundary line, and no

objective evidence of acquiescence for a ten or more year period?

(Assignment of Error No. 1)

#### IV. STATEMENT OF THE CASE

##### A. FACTUAL BACKGROUND

##### 1. Property Ownership

Before 1974, Harry and Audrey Axtell owned two adjoining parcels of land commonly known as 109 and 117 River Glen Terrace, Kalama, Washington. CP 26 Bishop Dec, ¶ 2. The parcels both extend to the center of the Kalama River in the west. CP 26 Bishop Dec, ¶ 3. The Axtells sold 109 River Glen Terrace to Frank Bishop and his wife in 1974. CP 26 Bishop Dec, ¶ 2. The Axtells sold 117 River Glen Terrace to Dan and Pat Carlson in 1980. CP 26 Bishop Dec, ¶ 2. The Bishops and Carlsons lived as neighbors for 21 years, until the Carlsons sold 117 River Glen Terrace to John and Julie Kuhlman in 2001. CP 27, 28 Bishop Dec, ¶ 11, 18. In 2005, the Bishops sold 109 River Glen Terrace to Stephen Chandler and his wife, Kim O'Neill. CP 28 Bishop Dec, ¶ 23.

109 River Glen Terrace, Kalama	117 River Glen Terrace, Kalama
Owned by Axtells	Owned by Axtells
Purchased by Bishops from Axtells in 1974	Purchased by Carlsons from Axtells in 1980
Purchased by Chandler and O'Neill from Bishops in 2005	Purchased by Kuhlman from Carlsons in 2001
Relying on verbal description of boundary	Relying on written legal descriptions contained in deeds

## 2. Boundary Discrepancy

The Kuhlman's purchases the property on River Glen Terrace by statutory warranty deed. CP 73, Appendix p. 2 (hereinafter "App."), John Kuhlman Dec, ¶ 3. The warranty deed contained a written legal description of the land the seller conveyed. CP 73, 79-81, App. pp. 2, 8-10, John Kuhlman Dec, ¶ 3, Ex. 1. Kuhlman's believe the legal description in the deed established the boundary – both at the time of their purchase and throughout their ownership of the property. CP 74, 79-81, App. pp. 3, 8-10, John Kuhlman Dec, ¶ 7, Ex. 1. Along with the statutory warranty deed, the Carlsons provided a "seller's disclosure statement" when they conveyed the property to the Kuhlman's. CP 73, 82-86, App. pp. 2, 11-15, John Kuhlman Dec, ¶ 4, Ex. 2. The "seller's disclosure statement" confirmed that there were no boundary agreements or boundary disputes known to the Carlsons. CP 73, 82-86, App. pp. 2, 11-15, John Kuhlman Dec, ¶ 4, Ex. 2. When the Bishops sold their property to the Chandlers, they likewise submitted a "seller's disclosure statement" which, likewise, denied any boundary disputes or boundary agreements known to them. CP 62-68, App. pp. 34, 35-40, Selfridge Dec, ¶ 6, Ex. 1.<sup>1</sup>

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<sup>1</sup> While the Bishops to Chandlers deed is not in evidence, the Chandlers allege that the boundary differs from the "legal boundary." CP 1-6, Amended Complaint. Accordingly, one can safely assume that the Chandlers seek something in addition to what was conveyed to them by their deed.

Despite the written legal descriptions contained in the deeds, and the admitted absence of any boundary agreement by both the Carlsons and the Bishops, the Chandlers now state that the boundary is not established by the written legal description but instead is set by an iron pipe, a rock and a blaze in a cedar tree. CP 27 Bishop Dec, ¶ 4, 5. To support their position, the Chandlers rely on the testimony of Bishop, who describes a verbal agreement made in 1974, contrary to the written legal descriptions, regarding these monuments and a “visible line” that marked the boundary between the properties. CP 27 Bishop Dec, ¶ 7. One of the iron pipes was washed away in 1996 and was replaced by a rock set in concrete. CP 28 Bishop Dec, ¶ 13.

When the Kuhlman's purchased the property at 117 River Glen Terrace from the Carlsons, the Carlsons did not show the Kuhlman's a rock set in concrete, nor did they tell them that such a rock established the boundary instead of the written legal description. CP 73-74, App. pp. 2-3, John Kuhlman Dec, ¶ 5. The Carlsons did not show the Kuhlman's a pipe that supposedly changed the boundary from that provided in the written legal description. Nor did they show the Kuhlman's a blaze mark on a tree. CP 73-74, App. pp. 2-3, John Kuhlman Dec, ¶ 5. At the time the Kuhlman's purchased the property, ivy covered the cedar tree. CP 73-74, App. pp. 2-3, John Kuhlman Dec, ¶ 5. Since he learned of Bishop's

comments about the blaze on the tree, Mr. Kuhlman has inspected the tree, without the ivy, and has been unable to find such a mark. CP 74, App. p. 3, John Kuhlman Dec, ¶ 6.

### C. PROCEDURAL BACKGROUND

Plaintiffs Stephen Chandler and Kim O'Neill filed their complaint for Quiet Title against the Kuhlman on October 2, 2006. Other parties were named and other claims made, none of which are relevant for this appeal. The Kuhlman filed an Answer and Counterclaims on December 22, 2006. After discovery and the amendment of the complaint on two occasions, the Chandlers filed a motion for summary judgment solely on the Quiet Title claim against the Kuhlman on December 16, 2008. CP 16. In response, the Kuhlman filed a cross-motion for partial summary judgment on January 20, 2009. CP 46-60. The court heard argument on February 20, 2009 and ruled from the bench granting the Chandlers' motion and denying the Kuhlman's motion. CP 130. An order reflecting this ruling was entered on May 15, 2009. CP 131-136. Final judgment on this issue alone was entered on June 26, 2009. CP 137-141. The Kuhlman filed their Motion to Stay Enforcement of the Judgment on July 6, 2009, along with a Notice of Cash Deposit as Supersedeas Bond. The Kuhlman filed their Notice of Appeal on July 23, 2009, within thirty (30) days from the date the judgment was entered.

## V. ARGUMENT

Title to land is established by the written legal description contained in the title documents. William Stoebuck, a well-recognized authority on Washington real property law, explains in his treatise that there are “four legal doctrines that, in addition to adverse possession, may allow boundaries to be adjusted by oral acts of neighbors or by their acts on the ground, contrary to the boundaries described in title documents.”

17 William B. Stoebuck, *Washington Practice: Real Estate: Property Law* § 8.21, at 544 (2nd ed. 2004). These four boundary adjustment doctrines include: (1) common grantor, (2) estoppel in pais, (3) parol agreement, and (4) recognition and acquiescence. *Id.*

The Chandlers relied upon two of the four doctrines in their argument on summary judgment: that the oral boundary they seek to enforce in contradiction of the written description in the deed was determined via the common grantor doctrine, and that, in the alternative, the oral boundary was acquiesced in by the current parties or their predecessors-in-interest. CP 20 Plaintiffs’ Memorandum of Authorities in Support of Summary Judgment, p. 4.

### A. STANDARD OF REVIEW

The Kuhlmanns are appealing the trial court’s denial of its motion for summary judgment and the trial court’s grant of the Chandlers’ motion



for summary judgment. On appeal from a summary judgment, the standard of review is *de novo* and the appellate court engages in the same inquiry as the trial court. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004) (citing *Kruse v. Hemp*, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993)). In conducting this inquiry, this court must view all facts and reasonable inferences in the light most favorable to the nonmoving party. *Id.* (citing *City of Lakewood v. Pierce County*, 144 Wn.2d 118, 125, 30 P.3d 446 (2001)). Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). "A material fact is one upon which the outcome of the litigation depends, in whole or in part." *Hisle*, 121 Wn.2d at 722 (citing *Barrie v. Hosts of Am., Inc.*, 94 Wn.2d 640, 642, 618 P.2d 96 (1980)).

B. GENUINE ISSUES OF MATERIAL FACT PREVENTED  
SUMMARY JUDGMENT FROM BEING ENTERED IN  
FAVOR OF CHANDLERS

When considering all the factual evidence submitted in support of and in opposition to the Chandlers' motion for summary judgment, the following factual disputes are evident:

- Chandler states that Bishop showed him the fence as the boundary on at least two occasions. CP 32 Chandler Dec, ¶ 4.

Bishop states that the fence is on the Kuhlman side of the boundary. CP 29 Bishop Dec, ¶ 22.

- Bishop states that he and Axtell came to an agreement that “the surveyor’s monument and visible line” marked the boundary. CP 27 Bishop Dec, ¶ 7. Bishop answered “No” in his seller’s disclosure form to the question, “Are there any encroachments, boundary agreements, or boundary disputes?” CP 62, App. p. 34, Selfridge Dec, ¶ 6 – attached Bishop Seller’s Disclosure Form.
- Chandler states that Selfridge, Bishop’s agent, pointed to the fence as the boundary between the two properties. CP 32 Chandler Dec, ¶ 5. Selfridge states that he did not – at no time did he represent to Chandler that the fence was the correct boundary line between the two properties. CP 62, App. p. 34, Selfridge Dec, ¶ 4.
- Bishop states that Carlson respected the orally agreed upon boundary line. CP 28 Bishop Dec, ¶ 11, 14. Carlson states in his seller’s disclosure statement that there were no boundary agreements. CP 73, 92-96, App. pp. 4, 11-15, John Kuhlman Dec, ¶ 4, Ex. 2.

- Chandlers conceded in their reply memorandum that the evidence presented creates a question of fact as to notice to the Kuhlmanns. CP 105 Plaintiffs' Reply Memorandum, p. 2, l. 6-7.
- Bishop states that he and Carlson set a large rock in concrete as a boundary monument to replace the iron pipe that washed away in the 1996 flood. CP 28 Bishop Dec, ¶ 13. Carlson states that this rock was never meant to be a legal boundary, rather, it was used as an end form for a curved concrete mow strip after rip-rapping the river bank following the flood of 1996. CP 125-126 Carlson Dec dated 1/27/09, ¶ 6.
- Carlson submitted two declarations to the court. The first was dated June 9, 2007, filed December 22, 2008. CP 42-45 Carlson Dec dated 6/9/07. The second was dated January 27, 2009. CP 124-127 Carlson Dec dated 1/27/09. In the first declaration, Carlson stated that two "monuments" memorialized the boundary between the properties. CP 43 Carlson Dec dated 6/9/07, ¶ 4. Carlson does not describe what those monuments were. In the second declaration, Carlson describes a rock set in concrete (whether this is one of the monuments described earlier is unclear). CP 125-126 Carlson Dec dated 1/27/09, ¶ 6. In this

declaration, Carlson states he never meant for this to be the legal boundary. CP 125-126 Carlson Dec dated 1/27/09, ¶ 6.

C. THE CHANDLERS DID NOT PRESENT UNDISPUTED EVIDENCE TO ESTABLISH A BOUNDARY LINE THROUGH THE COMMON GRANTOR DOCTRINE

The common grantor doctrine requires the original grantor and grantee to agree to a boundary that is evident from a visual examination of the property. *Fralick v. Clark County*, 22 Wn.App. 156, 160, 589 P.2d 273 (1978). There are two separate reasons why the Chandlers are not entitled to summary judgment. First, there are questions of fact whether there was any agreement. Second, the record shows, at a minimum, that there are questions of fact as to whether the so-called boundary is apparent from a visual inspection. In this respect, no reasonable juror could find such a boundary; for that reason, the Kuhlman's are entitled to summary judgment.

The first element necessary to establish this exception to the rule that boundaries are determined by the written legal description contained in the title documents is this: there must be an agreement between the grantor and the grantee to a different boundary. Here, there are questions of fact as to whether there is such an agreement. Bishop swears in a declaration that there was such an agreement. But earlier, before this dispute arose and before Chandler named Bishop as a defendant in this

lawsuit, Bishop declared there was no such agreement. CP 62-68, App. p. 34, Selfridge Dec, ¶ 6. This material, factual discrepancy alone creates a question of fact preventing summary judgment in the Chandlers' favor.

The second element to this exception requires that the agreed upon boundary be evident from a visual examination of the property. Here, there was insufficient evidence that a visual examination of the property would show later purchasers that the deed line was no longer the true boundary.

The agreed boundary must be *more* obvious to bind subsequent buyers than required for the original grantor and grantee. *Fralick*, 22 Wn.App. at 159-160. When an agreed boundary is not clearly marked, such that a visual examination of the property indicates to subsequent purchasers that the deed line no longer functions as the boundary, subsequent purchasers are not bound by an earlier grantor's agreement. *Id.*

In *Fralick*, an agreed boundary marked by a waterfall was not a sufficiently visible indication of a boundary line agreement to a subsequent purchaser to put it on notice that the agreed boundary was not the deed boundary. *Id.* No fence or visible markings were on the land and the subsequent purchaser had no actual knowledge of the agreed boundary. *Id.*

Here, the Chandlers argue that an iron pipe, a rock set in cement (which replaced an original iron pipe) which the Kalama River sometimes covered, and a scored tree mark the oral boundary. But these points do not make a well-defined boundary. There is nothing that is evident from a visual examination of the so-called “monuments” that indicate a boundary – unless one is told and agrees that this is the boundary. As the pictures in the record demonstrate, there was nothing to alert someone walking from north to south that they were crossing a boundary when the Kuhlman purchased the property in 2001. CP 87-102, App. pp. 16-31, John Kuhlman Dec, Exs 3-17. Further, at the time the Kuhlman purchased the property, no one made them aware of the pipe, rock or tree. CP 73-74, App. pp. 2-3, John Kuhlman Dec, ¶ 5. Further, at the time of purchase, the cedar tree was covered in ivy and a blaze would not have been visible, even if it existed. CP 73-74, App. pp. 2-3, John Kuhlman Dec, ¶ 5. Since becoming aware of the purported blaze in the cedar tree, Kuhlman has examined the tree and cannot even find such a blaze mark. CP 74, App. p. 3, John Kuhlman Dec, ¶ 6.

The improvements do not demonstrate a boundary either. Apparently, the Bishops made improvements on the Carlson side of what Bishop now says is the boundary. CP 28 Bishop Dec, ¶ 15. At the same time, the Carlsons made improvements on the Bishop side of the line.

CP 76, App. pp. 5, 8-31, John Kuhlman Dec, ¶ 14 and accompanying Exs. To a subsequent purchaser then, a visual examination of the improvements did not reveal a defined boundary.

When a subsequent purchaser has knowledge of an agreed boundary line, the line need not be so obvious. *Fralick*, 22 Wn.App. at 160. But the Kuhlman did not have notice of an “agreed” boundary. CP 73-74, App. pp. 2-3, John Kuhlman Dec, ¶ 5. While Dan Carlson did point to the general area of the boundaries – around a bush and around a tree – when showing the Kuhlman the property, he did not show the Kuhlman any particular monuments that marked the boundary line. CP 73-74, App. pp. 2-3, John Kuhlman Dec, ¶ 5. To the contrary, the Carlsons certified to the Kuhlman in writing that there were no boundary agreements. CP 82-86, App. pp. 11-15, John Kuhlman Dec, Ex. 2.

Interestingly, Stephen Chandler asserts that Bishop told him that the decorative fence constructed by Kuhlman in 2004 was the boundary line – but Bishop does not back that story up; he does not assert that the fence is the boundary. CP 32 Chandler Dec, ¶ 4; CP 29 Bishop Dec, ¶ 22.

Accordingly, under *Fralick*, the common grantor rule cannot apply because the undisputed testimony reveals that at the time the Kuhlman bought their property, they were not on notice of an adjusted boundary, and a visual examination did not, indeed could not, reveal a physical

demarcation sufficient to make subsequent parties aware of the changed boundary. All of the subjective and unspoken beliefs held by the parties' predecessors in interest fail to establish sufficient evidence to adjust the written legal description contained in the parties' deeds. For this reason, the Chandlers are not entitled to summary judgment; to the contrary, the court should grant the Kuhlman's cross-motion for summary judgment.

D. THE CHANDLERS DID NOT PRESENT CLEAR, COGENT AND CONVINCING EVIDENCE TO ESTABLISH A BOUNDARY LINE THROUGH ACQUIESCENCE.

To establish a boundary line change through the doctrine of mutual recognition and acquiescence, the following elements must be shown:

(1) The line must be certain, well defined, and in some fashion physically designated upon the ground, e.g., by monuments, roadways, fence lines, etc.; (2) in the absence of an express agreement establishing the designated line as the boundary line, the adjoining landowners, or their predecessors in interest, must have in good faith manifested, by their acts, occupancy, and improvements with respect to their respective properties, a mutual recognition and acceptance of the designated line as the true boundary line; and (3) the requisite mutual recognition and acquiescence in the line must have continued for that period of time required to secure property by adverse possession.

*Lamm v. McTighe*, 72 Wn.2d 587, 593, 434 P.2d 565 (1967). The burden of proof is on the plaintiff to show, by clear, cogent and convincing evidence, that both parties acquiesced in the line for the period required to



establish adverse possession – 10 years. *Muench v. Oxley*, 90 Wn.2d 637, 641, 584 P.2d 939 (1978), *overruled on other grounds by Chaplin v. Sanders*, 100 Wn.2d 853, 861 n. 2, 676 P.2d 431 (1984).

In this case, the three necessary elements, a well-defined line, agreement by adjoining landowners, and the period of time for adverse possession, are not met. At a minimum, there are questions of fact precluding the Chandlers' motion for summary judgment.

If the line is insufficiently defined, a claim for boundary adjustment by mutual recognition and acquiescence fails. *Waldorf v. Cole*, 61 Wn.2d 251, 255, 377 P.2d 862 (1963). In *Waldorf*, an acquiescence claim failed because the disputed strip was unused and a rockery built against a dirt bank was insufficient. In *Scott v. Slater*, 42 Wn.2d 366, 368, 255 P.2d 377 (1953), *overruled on other grounds, Chaplin v. Sanders*, 100 Wn.2d 853, 861 n.2, 676 P.2d 431 (1984), a row of pear trees was insufficient to mark a boundary line.

For all the reasons set forth above, there is no line that is sufficiently well-defined. As one looks at the property, there is nothing to demonstrate a line. A "line" formed by an iron stake, a tree (among many) and a rock set in concrete, sometimes covered by the river, and never pointed out by prior owners, is not a well-defined boundary line.

Chandler argues that the Bishops and the Carlsons placed a concrete marker on the ground to designate the boundary<sup>2</sup>. It may be possible that such an inconspicuous marker might be a sufficient physical designation of the boundary as between the Bishops and the Carlsons, but this marker is insufficient to provide notice to third parties. As the court said in *Johnston v. Monahan*, 2 Wn.App. 452, 469 P.2d 930 (1970), to mark one point only on a line is to not mark it at all. *Id.* at 460. The marking on the property must be sufficiently conspicuous that successors would take notice of it.

Even if a well-defined line existed, both parties must agree that the defined line is in fact the boundary. *Muench*, 90 Wn.2d at 641. In *Muench*, the court found no acquiescence where, although a fence existed, the party claiming acquiescence did not show by clear and convincing evidence that the opposing party had acquiesced to the fence marking the boundary line. *Id.* In *Houplin v. Stoen*, 72 Wn.2d 131, 431 P.2d 998 (1967), the landowner built a fence to enclose livestock on what he thought was the boundary line. *Id.* at 135. The neighboring landowners never discussed whether the fence was intended to mark a boundary. The court held that mere acquiescence of a fence as a *barrier* does not satisfy the requirement that the party must acquiesce to a fence as a *boundary*

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<sup>2</sup> Carlson disputes he intended this to be the legal boundary marker. CP 125-126 Declaration of Dan Carlson dated 1/27/09, ¶ 6.

*line. Id.* at 136-137 (emphasis added). Both parties, not merely the party benefitted by the line, must acquiesce. *Id.*

The cited cases show instances of well-defined and visible lines that were not boundaries due to a lack of acquiescence. In a case such as this, where no well-defined line exists at all, acquiescence is impossible. Neither the Kuhlmanns, nor their predecessors in interest, ever acquiesced to the Chandlers' alleged line.

The cited cases also require that the parties must have shown, by their acts and improvements, acquiescence to the line. As set forth above, the parties' predecessors made improvements on both sides of the so-called boundary line. When each party improves the other side of the line, it is impossible to say that the parties constructed improvements in recognition of the line. Here, the parties' predecessors did the opposite – they did things on both sides of the line.

Finally, a party seeking to take advantage of this doctrine must establish that the line has been acquiesced to for the period of time required by adverse possession. *Lamm*, 72 Wn.2d at 593. The closest semblance to establishing a line was the fence the Kuhlmanns installed. But the Kuhlmanns installed their fence in the winter of 2004-2005, less than six years from this date. Long before now, they have filed a counterclaim to establish their rights. Accordingly, even if the other

elements of acquiescence were satisfied, this time is far less than required to adjust property boundaries by acquiescence. The Chandlers' argument that previous owners established a line some 25 years ago fails for the reasons above: there was no visible line that was sufficiently clear.

#### VI. CONCLUSION

The trial court erred in granting summary judgment in the Chandlers' favor. A disputed issue of material fact prevented the entry of summary judgment in their favor. Likewise, the Chandlers presented insufficient evidence to establish an adjustment to the written legal description under either of the theories presented. The Kuhlman respectfully request this court reverse the trial court's judgment and remand this case for entry of judgment in favor of the Kuhlman.

Dated this 23<sup>rd</sup> day of December, 2009.

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Julie Kuhlman

# APPENDIX

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SUPERIOR COURT  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF COWLITZ

STEPHEN CHANDLER and KIM O'NEILL,  
husband and wife,

Plaintiffs,

v.

JOHN KUHLMAN and JANE DOE  
KUHLMAN, husband and wife; TIM  
SELFRIDGE and JANE DOE SELFRIDGE,  
husband and wife; and WINDERMERE  
REAL ESTATE/STELLAR GROUP,  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEM, INC., FIRST  
AMERICAN TITLE COMPANY, AND  
CHASE MANHATTAN BANK USA,

Defendants.

JOHN KUHLMAN and JULIE KUHLMAN,  
husband and wife,

Third-Party Plaintiffs,

v.

DAN I. CARLSON and PATRICIA J.  
CARLSON, husband and wife,

Third-Party Defendants.

Case No. 06-2-01922-0

DECLARATION OF JOHN KUHLMAN IN  
SUPPORT OF DEFENDANTS/THIRD-  
PARTY PLAINTIFFS KUHLMANS'  
RESPONSE TO PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT

I, JOHN KUHLMAN, declare and state as follows:

DECLARATION OF JOHN KUHLMAN IN  
SUPPORT OF RESPONSE TO PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT — Page 1

60

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te: 503-243-1022 Fax: 503-243-2019

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- 1 1. I am over the age of 18 and competent to testify in the above entitled action.
- 2 2. The properties in dispute in this matter are commonly known as 109 River Glen  
3 Terrace, Kalama, Cowlitz County, Washington, and 117 River Glen Terrace,  
4 Kalama, Cowlitz County, Washington. Both properties are bounded along the  
5 west side by the Kalama River. The properties extend westward to the center of  
6 the Kalama River.
- 7 3. My wife and I purchased the north property, 117 River Glen Terrace, in 2001  
8 from the previous owners, Dan and Patricia Carlson. Attached as Exhibit 1 is a  
9 true and correct copy of the statutory warranty deed executed by the Carlsons  
10 transferring the property, including a legal description of the property and a short  
11 subdivision plat.
- 12 4. At the time of purchase, the Carlsons provided us with a "seller's disclosure  
13 statement," a copy of which is attached as Exhibit 2. This form asks "Are there  
14 any encroachments, boundary agreements, or boundary disputes?" The  
15 Carlsons placed an X in the box marked "No."
- 16 5. When we purchased the north lot, the Carlsons did not show us any monuments  
17 establishing a property line between our lot and the south lot. Nor did they tell us  
18 about any agreements concerning the boundary lines of the property. While  
19 standing on the back patio of the property, in about the position where the picture  
20 that is attached as Exhibit 3 was taken, Mr. Carlson showed us the general  
21 location of the boundary. He pointed to the northwest and stated that the north  
22 boundary was in the general area of a bush; he pointed to the southwest and  
23 said the boundary was in the general area of a tree. Mr. Carlson never showed  
24  
25  
26

DECLARATION OF JOHN KUHLMAN IN  
SUPPORT OF RESPONSE TO PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT — Page 2

BODYFELT MOUNT  
Attorneys At Law  
707 SW Washington Street, Suite 1100  
Portland OR 97205-3528  
Phone: 503-243-1022 Fax: 503-243-2019

1 me a rock set in concrete by the river and he never told me that such a rock  
2 marked the boundary between his property and the property to the south. He  
3 never showed me a pipe to the southeast of the property (the northeast of the  
4 Bishop property) that marked the boundary. He did not show me any "blaze  
5 mark" on a tree nor did he tell me that such a "blaze mark" marked the boundary.  
6 In fact, at that time, the tree was covered with ivy.

7  
8 6. I have never seen a blaze on the tree plaintiff alleges was blazed to mark the  
9 boundary. Since I learned of Mr. Bishop's comments about the mark on the tree,  
10 I have inspected this tree and have been unable to find any such mark.  
11 (Chandler has removed the ivy on the tree.)

12 7. In purchasing the north property, I was provided with a legal description of the  
13 property and a description of the property which incorporated by reference a plat.  
14 I always relied upon, assumed, and believed that we were purchasing and  
15 getting what was described on the legal description and in the plat, nothing more  
16 and nothing less. See Exhibit 1.

17 8. Plaintiffs are the current owners of the lot to the south of us. They purchased  
18 that property in 2005 from Frank and Suzanne Bishop.

19 9. Attached as Exhibit 3 is a copy of a photograph taken on August 1, 1998. This  
20 photograph was taken before we purchased the north lot, when it was owned by  
21 the Carlsons. It shows the Carlson property and part of the Bishop property. This  
22 picture shows a roadway and a fence that runs along the Kalama River across  
23 part of the Carlson property -- but not all of it. The picture also shows sprinkler  
24 posts and landscaping. In looking at this photograph, there is no clearly marked  
25  
26



1 boundary between the lots that is shown on the property. As mentioned above,  
2 this photograph was taken from the patio area behind my house, in about the  
3 same location where Mr. Carlson showed us the general locations of the  
4 boundaries.

5 10. Attached as Exhibit 4 is a true and correct copy of a photograph taken January  
6 11, 1998. This photograph shows the yards of the two properties and again  
7 shows that there is no marked boundary line between the properties. If one were  
8 to walk across the two yards from north to south, one would not know when one  
9 crossed a boundary.

10 11. Attached as Exhibits 5, 6, and 7 are true and correct copies of photographs taken  
11 after we purchased the property from the Carlsons and that show portions of both  
12 yards. Again, these photos show no marked or well defined boundary line  
13 between the two properties.

14 12. Attached as Exhibit 8 is a true and correct copy of a photograph taken from my  
15 property, which shows mostly what was at that time the Bishops' lot. Note that  
16 landscaping extends into the Bishop lot. No clearly defined boundary line existed.  
17 Exhibits 3 - 8 show that both before and at the time I purchased the property,  
18 there was no readily visible line showing a boundary between the north and  
19 south lots. As one walked from north to south, there was no way to readily tell  
20 when one crossed the boundary line.

21 13. Attached as Exhibit 9 is a true and correct copy of a photograph taken from  
22 across the Kalama River showing the north and south lots taken before the  
23  
24  
25  
26

1 Chandlers demolished the original house on their lot. The ivy-covered cedar tree  
2 slightly right of center is the tree that plaintiffs allege marks the boundary.

3 14. Attached as Exhibit 10 is a true and correct copy of a photograph of my and the  
4 Bishops' property. The ivy-covered tree in the center of the photograph is the one  
5 that plaintiffs allege marks the boundary. In front of the tree is a railroad-tie  
6 retaining wall. This wall was installed by Carlson on the north property and  
7 extends well to the south of what plaintiff claims to be the boundary line. This  
8 improvement was obviously not made in respect of and in deference to the  
9 boundary line that plaintiffs claim to be the boundary line. There is also a  
10 concrete mow strip that extends to the south of the line and towards the Bishops'  
11 house.  
12

13 15. Between December 2004 and February 2005, I built a decorative fence on my  
14 property. This split-rail fence was intended to be for decorative purposes only. I  
15 wanted to be sure it was on my property, so I made sure it was well within the  
16 property line. Attached as Exhibit 11 is a true and correct copy of a photograph  
17 showing the decorative fence. When I built this fence, the Bishops were in  
18 Arizona where they had begun living during most of the year. We spoke a  
19 number of times and Julie informed them that I had built the fence.  
20

21 16. In constructing this decorative fence, I left an opening in the fence and paved the  
22 area of this opening with bricks in order to allow easy access for mowing both  
23 sides of the fence. Attached as Exhibit 12 is a true and correct copy of a  
24 photograph showing my decorative fence and the paved area for mower access.  
25 After this dispute arose and plaintiff tore out and replaced my landscaping south  
26

1 of the fence, I removed the paving bricks and planted additional shrubs north of  
2 the fence. Attached as Exhibit 13 is a true and correct copy of a photograph  
3 showing where plaintiffs installed new landscaping and removed the paving  
4 bricks and planted laurels. Exhibits 12 and 13 also show the railroad tie retaining  
5 wall and concrete mow strip, which extend south (right) of the tree plaintiffs  
6 allege marks the boundary. This retaining wall has been in existence for many  
7 years.

8  
9 17. After constructing the decorative fence, I continued to maintain the property on  
10 both sides of the fence until plaintiff, without my permission, removed my  
11 landscaping on the south side of the fence, including an established hemlock,  
12 multiple ferns and ivy plants, and several hundred square feet of lawn. Plaintiffs  
13 replaced my landscaping with new landscaping. Attached as Exhibits 14 - 15 are  
14 true and correct copies of photographs showing plaintiffs' new landscaping. In  
15 the center of each photograph is the cedar tree plaintiffs allege was marked to  
16 show the boundary line. Note that the railroad tie retaining wall identified in  
17 Exhibit 10 to the south (left) of the tree, clearly extending across the line plaintiffs  
18 allege is the boundary. There is no readily visible mark on this tree to show a  
19 boundary.

20  
21 18. A house was on the south lot when plaintiffs purchased it. Plaintiffs intended to  
22 demolish the original house and build a new house on the property, which they  
23 ultimately did. More than a year after purchasing the south property, and after  
24 demolishing the original house, plaintiffs ordered a survey, which showed that  
25 that property line is south of my decorative fence. Later, a second survey was  
26

1 done. Mr. Chandler told me the first was one was in error. This second survey  
2 also showed that that property line is south of my decorative fence. Both surveys  
3 indicated that the property line is south of the decorative fence on my property.  
4 Attached as Exhibit 16 is a true and correct copy of a photograph showing a  
5 boundary line marker from the second survey (pink stake in the center of the  
6 photograph). The tree on the right foreground is the cedar plaintiffs allege marks  
7 the boundary line. My decorative fence is visible on the right of the photograph,  
8 north of the boundary stake. Note also that the railroad-tie retaining wall (in the  
9 foreground), extends south of the cedar tree.  
10

11 19. Attached as Exhibit 17 is a true and correct copy of a photograph showing the  
12 stake (left center) marking the line of the second survey. The stake in the  
13 foreground was removed but has been placed in the approximate position of  
14 where it had been. The tree on the right side of the photograph is a hemlock tree  
15 that the Chandlers removed from my property without my permission. The final  
16 and correct survey showed that this tree is on the north side of the line.

17 I hereby declare that the above statement is true to the best of my  
18 knowledge and belief, and that I understand it is made for use as a evidence in  
19 court and is subject to penalty for perjury.

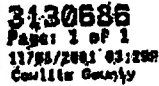
20 Dated this 15 day of January, 2009.

21  
22 BY:   
23

JOHN KUHLMAN

24 **DECLARATION OF JOHN KUHLMAN IN**  
25 **SUPPORT OF RESPONSE TO PLAINTIFFS'**  
26 **MOTION FOR SUMMARY JUDGMENT — Page 7**

**BODYFELT MOUNT**  
Attorneys At Law  
707 SW Washington Street, Suite 1100  
Portland OR 97205-3528  
Phone: 503-243-1022 Fax: 503-243-2018



Received \$5000  
 placed in C. J. Laws for 1951  
 C-2063 JUDY ARSLIN  
 457-142 COWLEY COUNTY TRUCK  
 457-142 457-142 457-142

LPD-10 EXHIBIT 1  
PAGE 1 OF 3  
YB

- DATE MAY 2, 1980

NAME \_\_\_\_\_

**人口政策**

AUGUST N. ARTIEL

303 BATES ROAD

KALAMA, WASHINGTON. 58C25

**LEGAL DESCRIPTION OF PROPERTY TO BE SUBDIVIDED:**

A PARCEL OF LAND LOCATED IN SECTION 35, TOWNSHIP 7 NORTH, RANGE 1 WEST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT AN IRON PIPE THAT IS LOCATED SOUTH 71°22'31" WEST 117.02 FEET FROM THE EAST ONE-QUARTER CORNER OF SECTION 35, TOWNSHIP 7 NORTH, RANGE 1 WEST; THENCE FROM THE TRUE POINT OF BEGINNING, 40 NORTH 707.80 FEET TO A POINT IN THE CENTER OF THE KALAMA RIVER; THENCE FOLLOWING THE CENTER OF THE KALAMA RIVER, WEST 89.45 FEET; THENCE ON A CURVE TO THE LEFT WITH A CENTRAL ANGLE OF 75°01'25", A RADIUS OF 477.50 FEET, AN ARC DISTANCE OF 625.25 FEET; THENCE SOUTH 14°58'51" WEST 212.87 FEET; THENCE LEAVING SAID RIVER, RUNNING EAST 216.15 FEET TO A POINT ON A CURVE TO THE LEFT, THE CENTER OF WHICH BEARS SOUTH 72°25' EAST, AND HAVING A BACK TANGENT THAT BEARS SOUTH 17°23' WEST, WITH A CENTRAL ANGLE OF 25°09', A RADIUS OF 221.9 FEET, AN ARC DISTANCE OF 100.87 FEET; THENCE, SOUTH 08°46' EAST 146.03 FEET; THENCE NORTH 84°16'50" EAST 259.92 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 7.24 ACRES

**DECLARATION:** Know all men by these presents, that the undersigned owners of the land hereof subdivided, hereby declare this subdivision and dedicate to the use of the public forever, all streets and easements or whatever public property there is shown on the plat, and the use thereof for any and all purposes except for streets or lots, from the loss etc. shown on this plat. In the presence of a legal finding of all streets shown hereon.

NOTA: STATE OF WASHINGTON  
COUNTY OF GRANT

On this 6<sup>th</sup> day of May 1980  
before me a Notary Public, personally appeared

Andrew F. Kestell

and on all states that the property described here in has not been  
 listed for the last five (5) years.

OWNER: John J. Smith

OWNER \_\_\_\_\_

OWNER \_\_\_\_\_

DIVISION OF INVESTIGATION

NOTARY: [Signature]  
Notary Public in and for the State of  
Washington  
Washington

**SUPERVISOR'S CERTIFICATION**

I, Franklin B. Brown  
 hereby certify that the hereunto attached plan correctly represents  
 survey made by me or under my direction, in conformity with  
 the requirements of the Survey Recording Act, at the request of  
 Surveyor's No. 4132.  
 (Write Reverse Side)

DEEDS: I hereby certify that the taxes on the land described hereon have been paid on and including the year of - 1984.

*Robert M. Herbert* Admin. Officer

EXAMINED AND APPROVED THIS 3rd day of Dec 1941

1980

~~DIRECTOR, Department of Community Development~~

BOARD OF COUNTY COMMISSIONERS.

Chairman

Commissioner

Commissioner

Artist: 10

DATE: \_\_\_\_\_

**EXHIBIT** 1

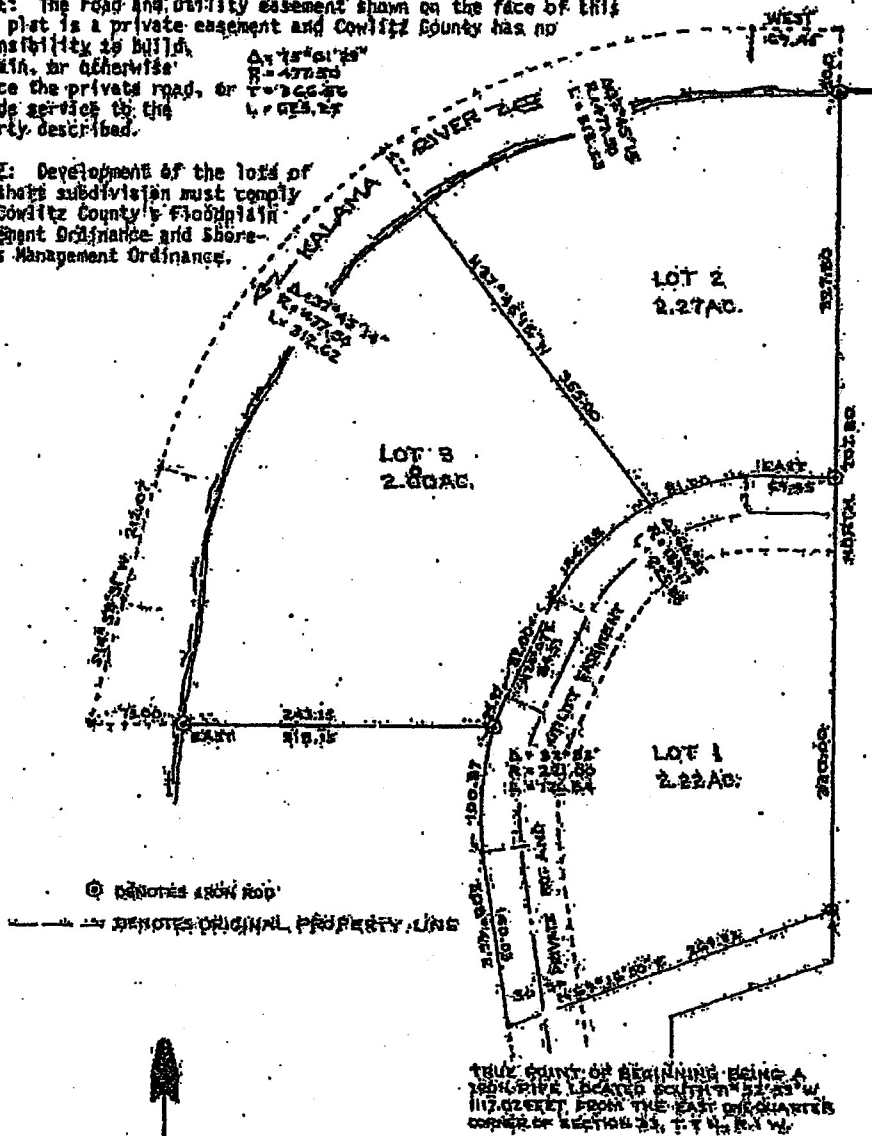
PAGE 2 OF 3

NOTICE: Approval of this short plat is not a guarantee that future permits will be granted.

**SHORT SUBDIVISION NO. 80-040**  
**AN ADDITION OF COWLITZ COUNTY**

NOTICE: The road and utility easement shown on the face of this short plat is a private easement and Cowlitz County has no responsibility to build, maintain, or otherwise service the private road, or provide service to the property described.

NOTICE: Development of the lots of this short subdivision must comply with Cowlitz County's Floodplain Management Ordinance and Shoreline Management Ordinance.



Page 1 of 3 - 80-040-01

TRAIL POINT OF BEGINNING BEING A POINT LOCATED SOUTH 22° 23' W 117.02 FEET FROM THE EAST CORNER OF SECTION 34, T 4 N, R 14 W.

800700020 87-2544 & 05008

THIS SPACE FOR AUDITOR'S USE

*Handwritten:* Auditing District  
Val 3 173  
JUL 3 11 58 AM '80  
*Handwritten:* W. J. [illegible]

EXHIBIT 1  
PAGE 3 OF 3

# REAL PROPERTY TRANSFER DISCLOSURE STATEMENT

1. To be used in transfers of residential real property, including multi-family dwellings up to four units; new construction; condominiums not subject to a public offering statement; and certain timeshares. See RCW 64.06 for further explanations.

## INSTRUCTIONS TO THE SELLER

2. Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property, write "NA". If the answer is "yes" to any item, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five (5) business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between Buyer and Seller.

## NOTICE TO THE BUYER

3. THE FOLLOWING DISCLOSURES ARE MADE BY THE SELLER(S) CONCERNING THE CONDITION OF THE PROPERTY LOCATED AT 117 RIVER GLEN TERRACE CITY KALAMA COUNTY COWITT (THE PROPERTY) OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

4. DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME THIS DISCLOSURE FORM IS COMPLETED BY THE SELLER. YOU HAVE THREE (3) BUSINESS DAYS, UNLESS OTHERWISE AGREED, FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE STATEMENT TO RESCIND YOUR AGREEMENT BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT OF RESCSSION TO THE SELLER. UNLESS YOU WAIVE THIS RIGHT AT OR PRIOR TO ENTERING INTO A SALE AGREEMENT, THE FOLLOWING ARE DISCLOSURES MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN THE BUYER AND THE SELLER.

5. FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THE PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF A QUALIFIED SPECIALIST TO INSPECT THE PROPERTY ON YOUR BEHALF. FOR EXAMPLE, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, OR PEST AND DRY ROT INSPECTORS. THE PROSPECTIVE BUYER AND THE OWNER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

6. Seller ☒ is not occupying the property.

## I. SELLER'S DISCLOSURES:

7. If "Yes" attach a copy or explain. If necessary, use an attached sheet.

### 1. TITLE

8. A. Do you have legal authority to sell the property?

9. B. Is title to the property subject to any of the following?

- (1) First right of refusal
- (2) Option
- (3) Lease or rental agreement
- (4) Life estate

10. C. Are there any encroachments, boundary agreements, or boundary disputes?

11. D. Are there any rights of way, easements, or access limitations that may affect the owner's use of the property?

12. E. Are there any written agreements for joint maintenance of an easement or right of way?

13. F. Is there any study, survey project, or notice that would adversely affect the property?

14. G. Are there any pending or existing assessments against the property?

15. H. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the subject property that would affect future construction or remodeling?

YES	NO	DON'T KNOW
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SELLER'S INITIAL: DIC

DATE: 9/10/01

SELLER'S INITIAL: DC

DATE: 9-14-01



Real Property Transfer Disclosure Statement Page 1 of 3  
(Rev. 11/1/2000)  
Washington Legal Blank, Inc., Spokane, WA 1725 First St., 2nd

EXHIBIT 2

PAGE 1 OF 5



	YES	NO	DON'T KNOW
31			
32			
33	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
34	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
35	2. WATER		
36	A. Household Water		
37	(1) The source of the water is: <input type="checkbox"/> Public <input type="checkbox"/> Community <input checked="" type="checkbox"/> Private <input checked="" type="checkbox"/> Shared		
38	(2) Water supply information:		
39	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
40	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
41	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
42	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
43	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
44	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
45	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
46	3. SEWER/SEPTIC TANK SYSTEM		
47	A. The property is served by:		
48	<input type="checkbox"/> Public sewer main <input checked="" type="checkbox"/> Septic tank system <input type="checkbox"/> Other disposal system		
49	Describe: _____		
50	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
51	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
52	D. If the property is connected to a septic system:		
53	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
54	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
55	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
56	By whom: <u>ALL OUT SEWER AND DRAIN</u>		
57	(5) How many bedrooms was the system approved for? <u>4</u> bedrooms		
58	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
59	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
60	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
61	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SELLER'S INITIAL: DIC DATE: 9/10/01 SELLER'S INITIAL: \_\_\_\_\_ DATE: \_\_\_\_\_



Karl Property Data/Information Statement Page 2 of 5  
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EXHIBIT 2

PAGE 2 OF 5

www.karlproperty.com

- 52 **4. STRUCTURAL**  
 53 **SKYLIGHTS DRIPPED**  
 54 A. Has the roof leaked? ☒ ☐ ☐  
 If yes, has it been repaired?  
 55 B. Have there been any conversions, additions or remodeling?  
 56 \* (1) If yes, were all building permits obtained?  
 57 \* (2) If yes, were all final inspections obtained?  
 58 C. Do you know the age of the house?  
 59 If yes, year of original construction: 1980  
 60 D. Do you know of any settling, slippage, or sliding of either the house or other  
 structures/improvements located on the property? If yes, explain:  
 61  
 62 E. Do you know of any defects with the following: (Please check applicable items).  
 63 ☐ Foundations ☐ Decks ☐ Fire Alarm  
 64 ☐ Chimneys ☐ Interior Walls ☐ Rats  
 65 ☐ Doors ☐ Windows ☐ Driveways  
 66 ☐ Ceilings ☐ Slab Floors ☐ Sausa  
 67 ☐ Pools ☐ Hot Tub ☐ Fireplaces  
 68 ☐ Sidewalks ☐ Garbldings ☐ Walkways  
 69 ☐ Garage Floors ☐ Exterior Walls ☐ Wood Stoves  
 70 ☐ Other  
 71 F. Was a pest or dry rot, structural or "whole house" inspection done? When and by  
 72 whom was the inspection completed?  
 73  
 74 G. Since assuming ownership, has your property had a problem with wood  
 75 destroying organisms and/or have there been any problems with pest control,  
 76 infestations, or vermin?  
 77  
 78

79 **5. SYSTEMS AND FIXTURES**

- 80 If the following systems or fixtures are included with the transfer,  
 81 do they have any existing defects?  
 82 A. Electrical system, including wiring, switches, outlets, and service. ☐ ☒ ☐  
 83 B. Plumbing system, including pipes, faucets, fixtures, and toilets. ☐ ☒ ☐  
 84 C. Hot water tank. ☐ ☒ ☐  
 85 D. Garbage disposal. ☐ ☐ ☐  
 86 E. Appliances. ☐ ☒ ☐  
 87 F. Sump pump. ☐ ☐ ☐  
 88 G. Heating and cooling systems. ☐ ☒ ☐  
 89 H. Security system ☐ Owned ☐ Leased ☐ ☐ ☐  
 90 I. Other: \_\_\_\_\_  
 91

92 **6. COMMON INTEREST**

- 93 A. Is there a Home Owners' Association? ☐ ☒ ☐  
 94 Name of Association: \_\_\_\_\_

SELLER'S INITIAL: DIC DATE: 9/10/01 SELLER'S INITIAL: ... DATE: 1.1.01

93 B. Are there regular periodic assessments? ☐ ☒ ☐  
94 per ☐ Month ☐ Year  
95 Other \_\_\_\_\_

96 \*C. Are there any pending special assessments? ☐ ☒ ☐

97 \*D. Are there any shared "common areas" or any joint maintenance agreements  
(facilities such as walls, fences, landscaping, pools, tennis courts, walkways,  
or other areas co-owned in undivided interest with others)? ☐ ☒ ☐

98 7. GENERAL

99 \*A. Is there any settling, soil, standing water, or drainage problems on the property? ☐ ☒ ☐

100 \*B. Does the property contain fill material? ☒ ☐ ☐

101 \*C. Is there any material damage to the property or any of the structure, from fire,  
wind, floods, beach movements, earthquakes, expansive soils, or landslides? ☐ ☒ ☐

102 D. Is the property in a designated flood plain or flood hazard zone? ☐ ☒ ☐

103 \*E. Are there any substances, materials, or products that may be an environmental  
hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based  
104 paint, fuel or chemical storage tanks, and contaminated soil or water on the  
105 subject property? ☐ ☒ ☐

106 \*F. Are there any tanks or underground storage tanks (e.g., chemical, fuel, etc.)  
107 on the property? ☐ ☒ ☐

108 \*G. Has the property ever been used as an illegal drug manufacturing site? ☐ ☒ ☐

109 8. FULL DISCLOSURE BY SELLER

110 A. Other conditions or defects:  
111 \*Are there any other material defects affecting this property or its value that a  
prospective buyer should know about? ☐ ☒ ☐

112 B. Verification.  
113 The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and  
114 I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this  
disclosure statement to other real estate licensees and all prospective buyers of the property.

115 Date: 9/10/01  
116 Seller: [Signature] Buyer: [Signature]

117 II. BUYER'S ACKNOWLEDGEMENT

118 A. As buyer(s), I/we acknowledge the duty to pay diligent attention to any material defects which are known to me/us or  
can be known to me/us by making diligent attention and observation.

119 B. Each acknowledges and understands that the disclosures set forth in this statement and in any amendments to this  
statement are made only by the seller.

120 C. Buyer (which term includes all persons signing the "buyer's acceptance" portion of this disclosure statement below)  
121 hereby acknowledges receipt of a copy of this disclosure statement (including attachments, if any) bearing seller's  
signature.

122 SELLER'S INITIAL: DIC DATE: 9/10/01 SELLER'S INITIAL: -H DATE: 1-11-01

123 DISCLOSURES CONTAINED IN THIS FORM ARE PROVIDED BY THE SELLER ON THE BASIS OF SELLER'S ACTUAL KNOWL-  
124 EDGE OF THE PROPERTY AT THE TIME OF DISCLOSURE. YOU, THE BUYER, HAVE THREE (3) BUSINESS DAYS, UNLESS OTH-  
125 ERWISE AGREED, FROM THE SELLER'S DELIVERY OF THIS SELLER'S DISCLOSURE STATEMENT TO RESCIND YOUR AGREEMENT BY DELIVERING YOUR SEPARATE SIGNED WRITTEN STATEMENT OF RESCISSION TO THE SELLER UNLESS YOU WAIVE THIS RIGHT OF RESCISSION.

126 BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS REAL PROPERTY TRANSFER DISCLOSURE STATEMENT  
127 AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY  
128 REAL ESTATE LICENSEE OR OTHER PARTY.

129 DATE: 9/21/01

130 BUYER: [Signature]

BUYER: [Signature]

7 B. LINE 100

FILL MATERIAL - RIVER BANK WAS RIP-RAPPED IN 1996  
- TERRACES WERE FILLED IN 1996

- LINE 135

THERE IS A ROAD MAINTENANCE AGREEMENT FOR GRADING AND GRAVEL REPAIRS ON BATES ROAD AND RIVER GLEN TERRACE. OUR ANNUAL FEES HAVE BEEN APPROXIMATELY \$100 PER YEAR. THERE ARE NO LARGER EXPENDITURES OR NEEDS NOW KNOWN OR FORESEEN IN THE NEAR FUTURE.

SELLER'S INITIAL: DIC DATE: 9/10/01

SELLER'S INITIAL: [Signature] DATE: 9-10-01



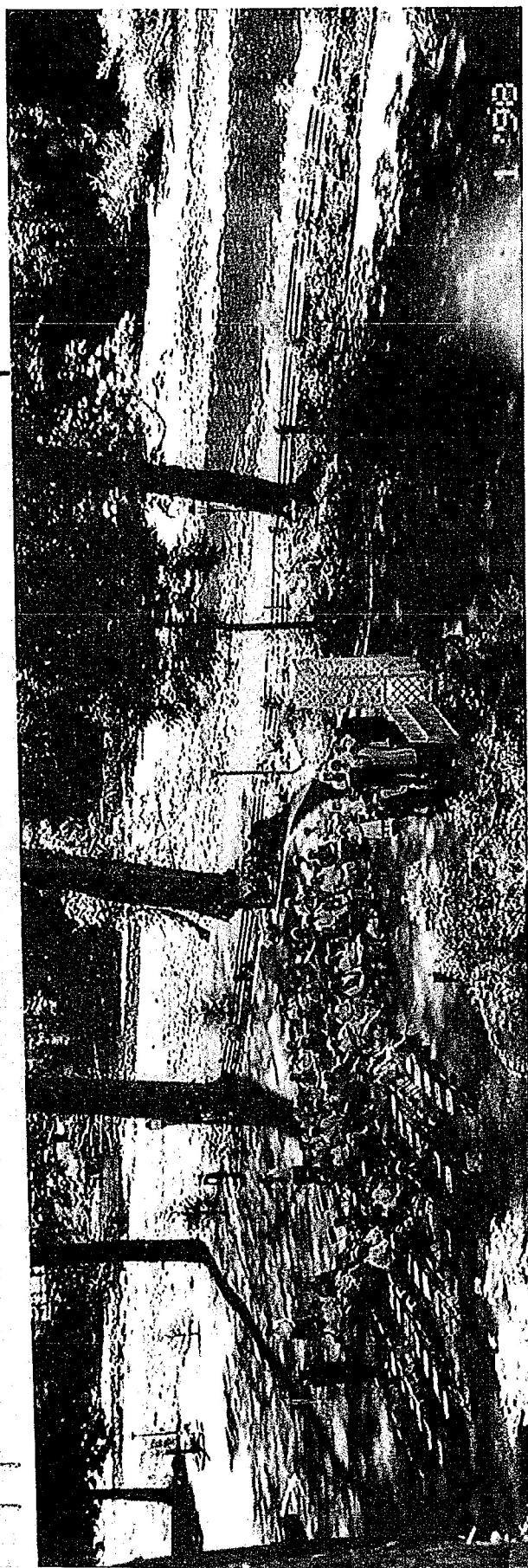
Real Property Transfer Disclosure Statement  
Washington State Real Estate Board, Inc., 1400 First Ave. S.  
Seattle, WA 98101

EXHIBIT 2

PAGE 5 OF 5

[www.waregbank.com](http://www.waregbank.com)

EXHIBIT 3  
PAGE 1 OF 1



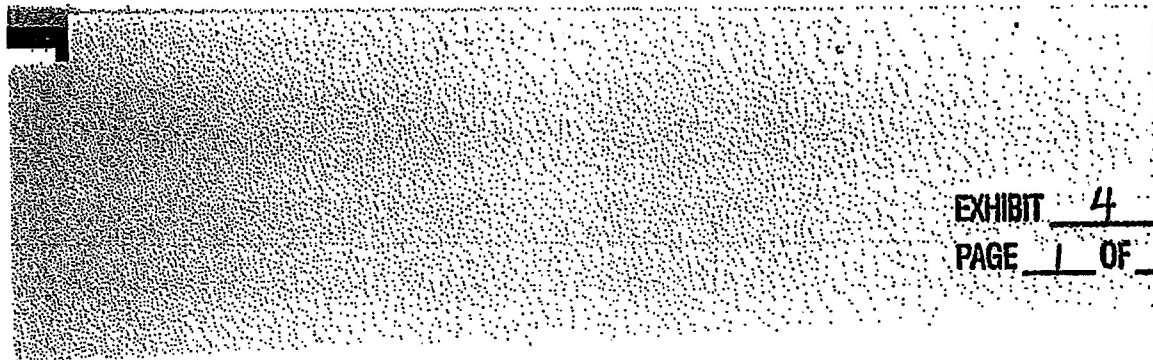
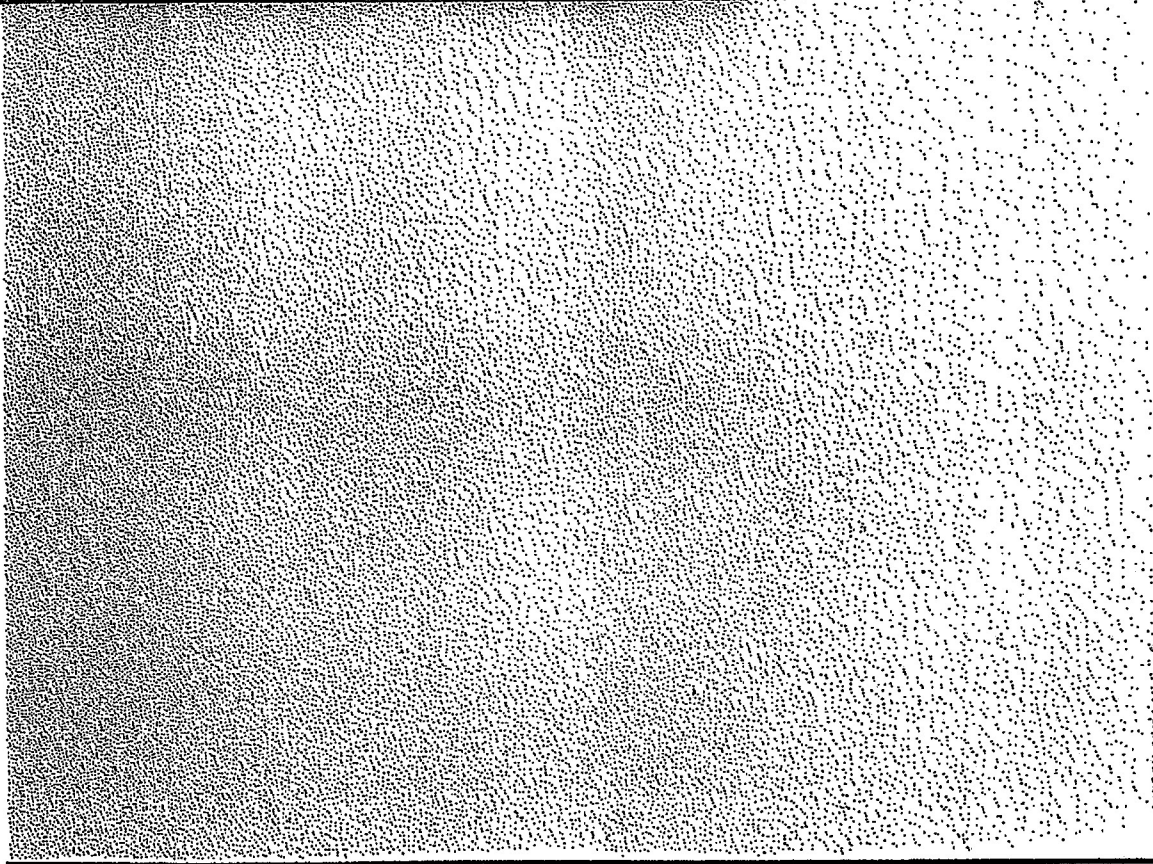


EXHIBIT 4  
PAGE 1 OF 2



Sunday 1/11/98

565M NNNZZB 1300N03 3.5"/5"

EXHIBIT 4  
PAGE 2 OF 2

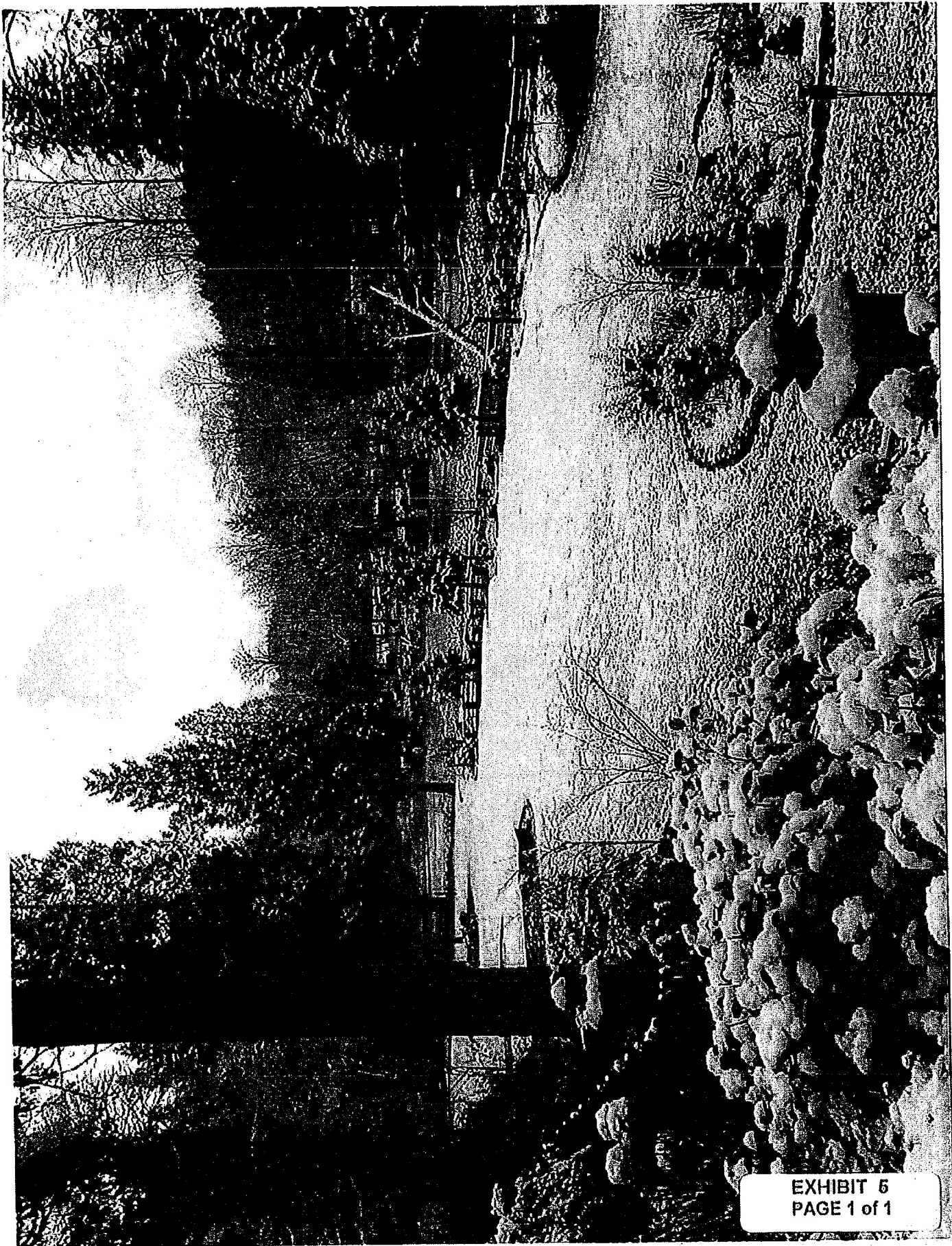


EXHIBIT 5  
PAGE 1 of 1



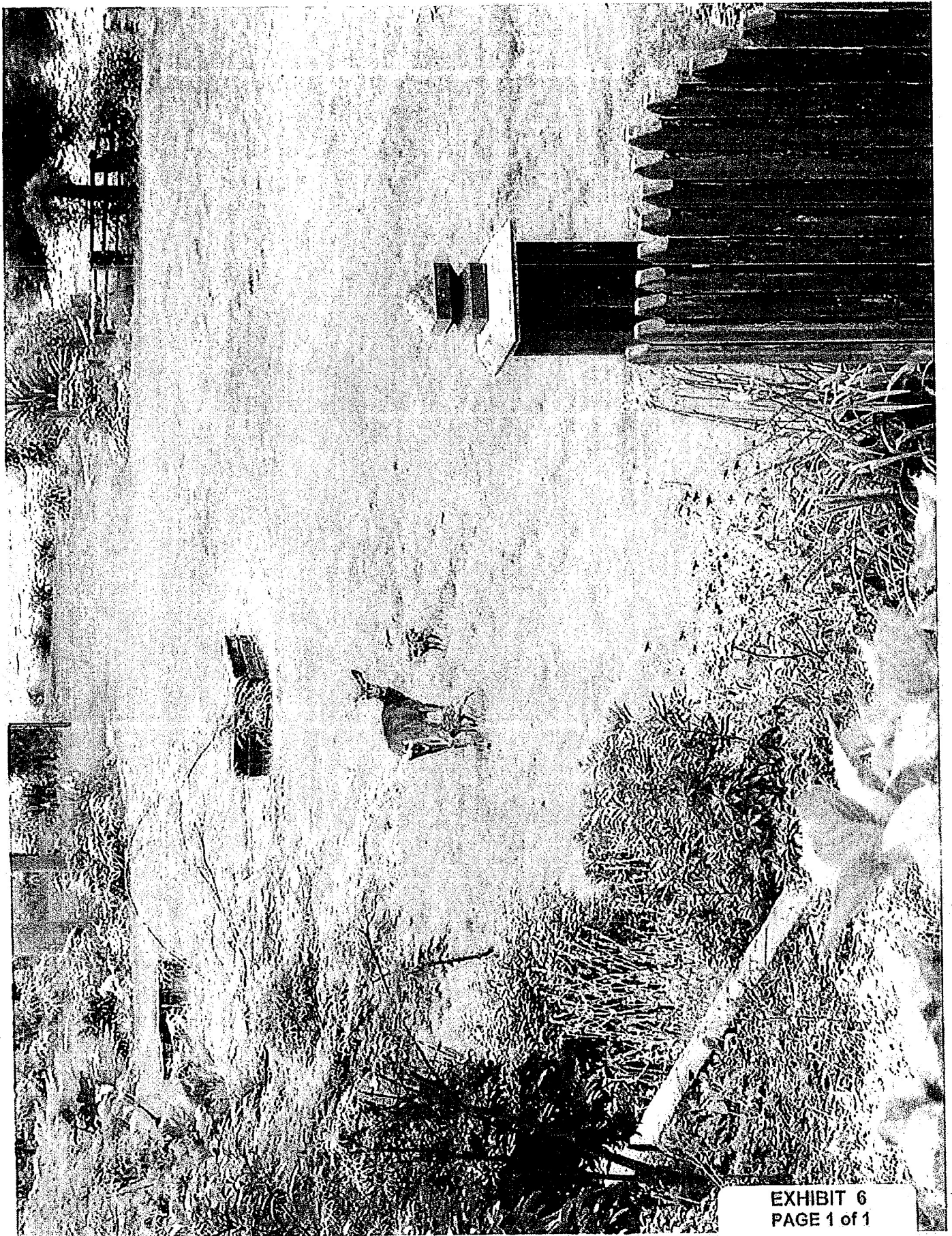


EXHIBIT 6  
PAGE 1 of 1

EXHIBIT 7  
PAGE 1 of 1

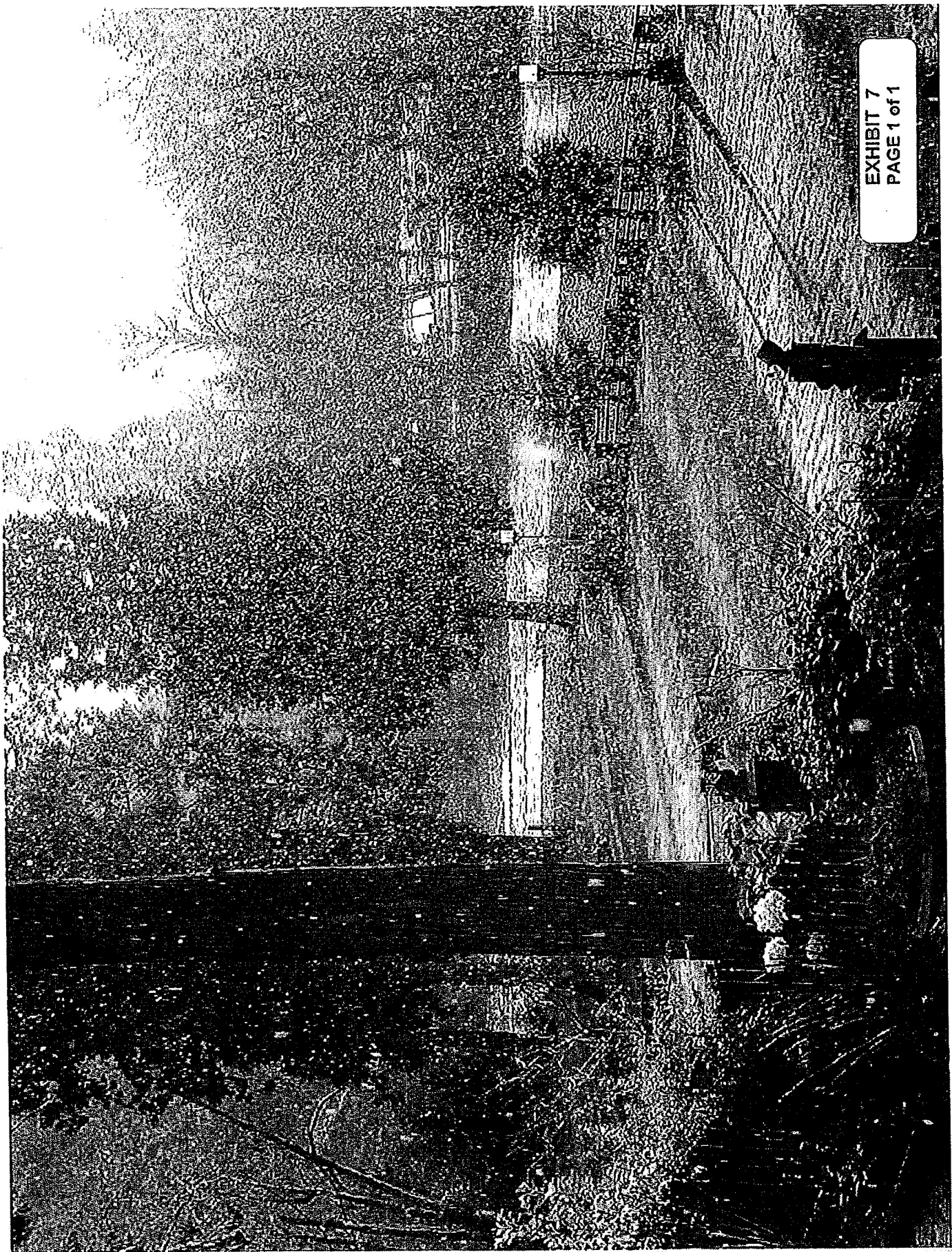






EXHIBIT 8  
PAGE 1 of 1

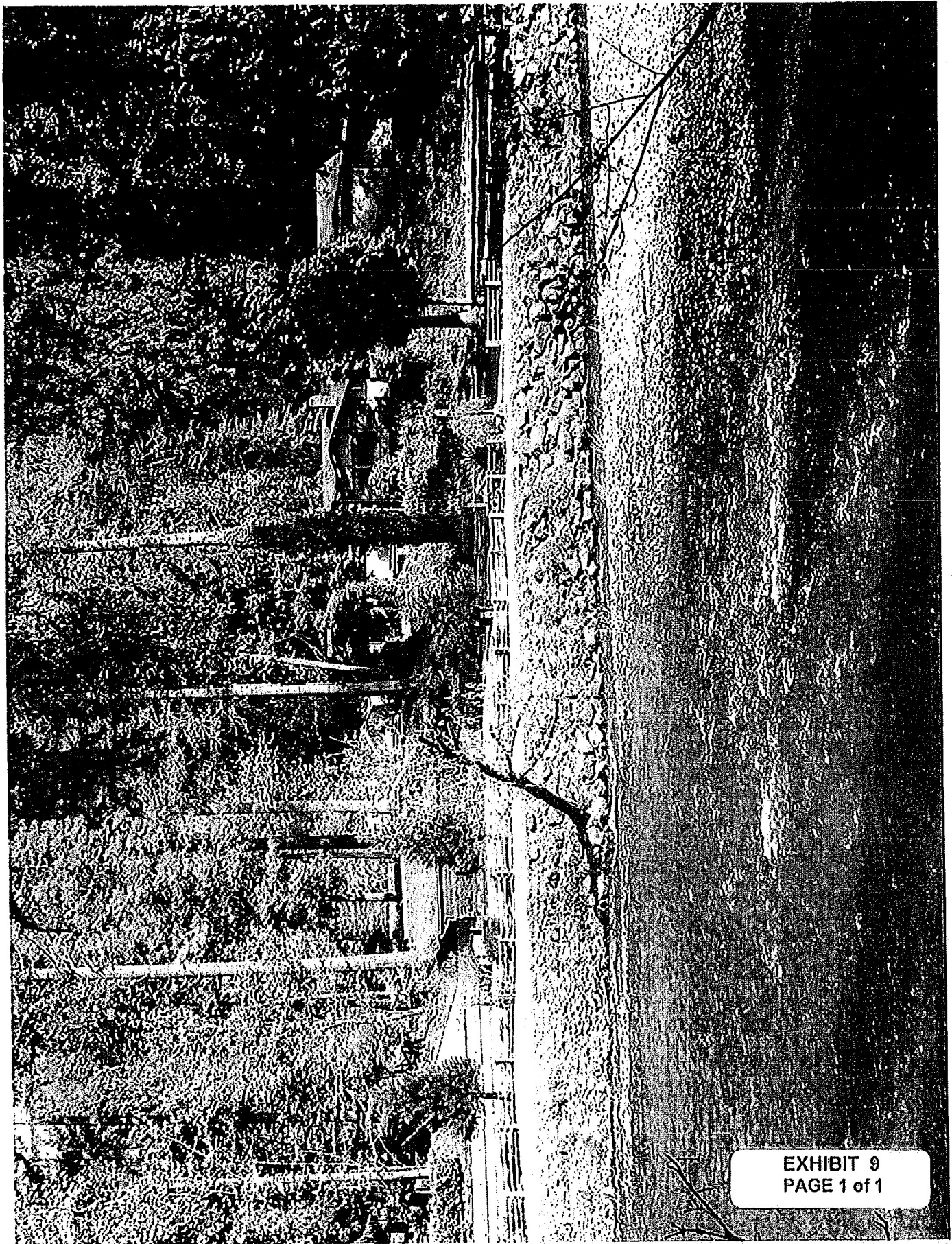


EXHIBIT 9  
PAGE 1 of 1



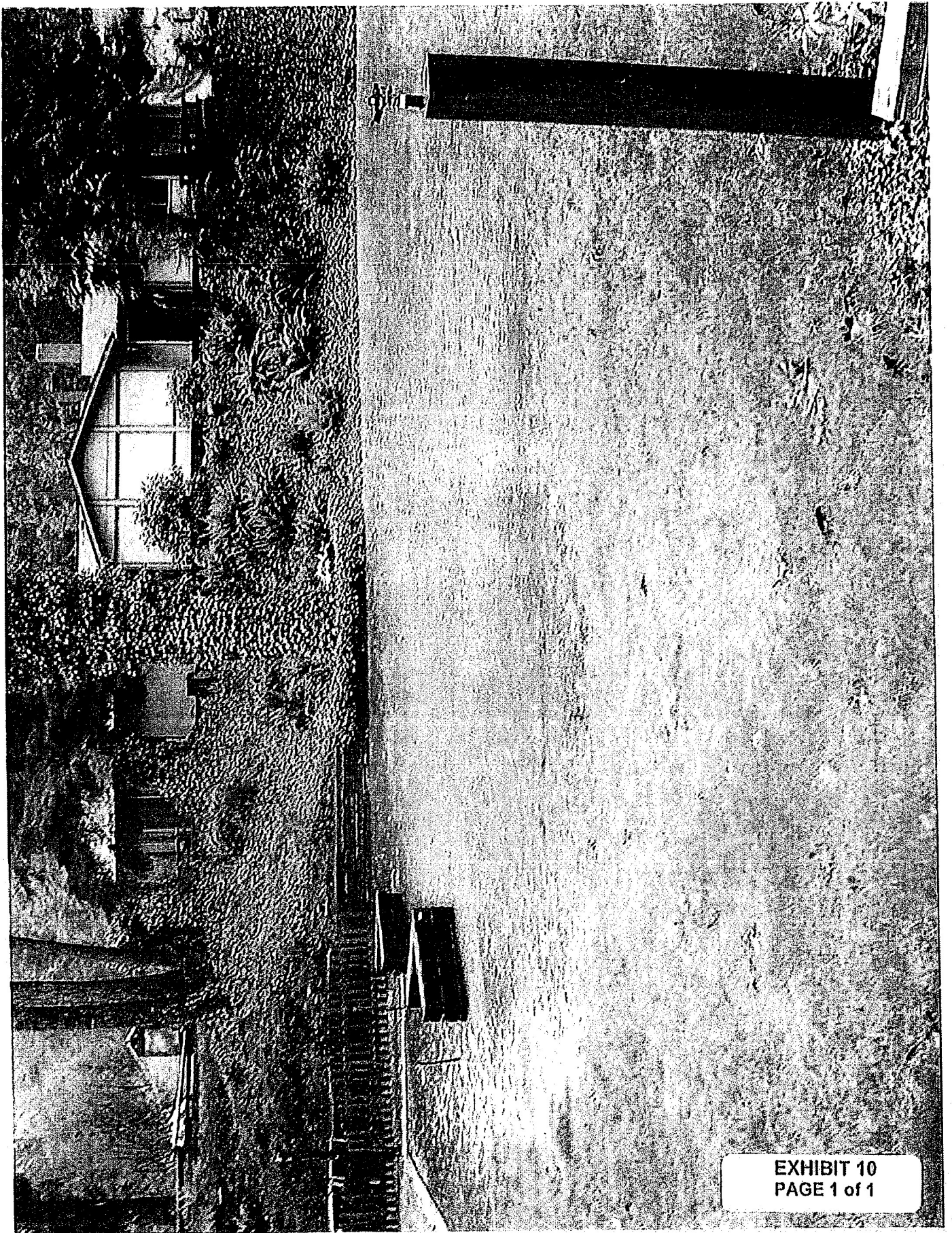


EXHIBIT 10  
PAGE 1 of 1

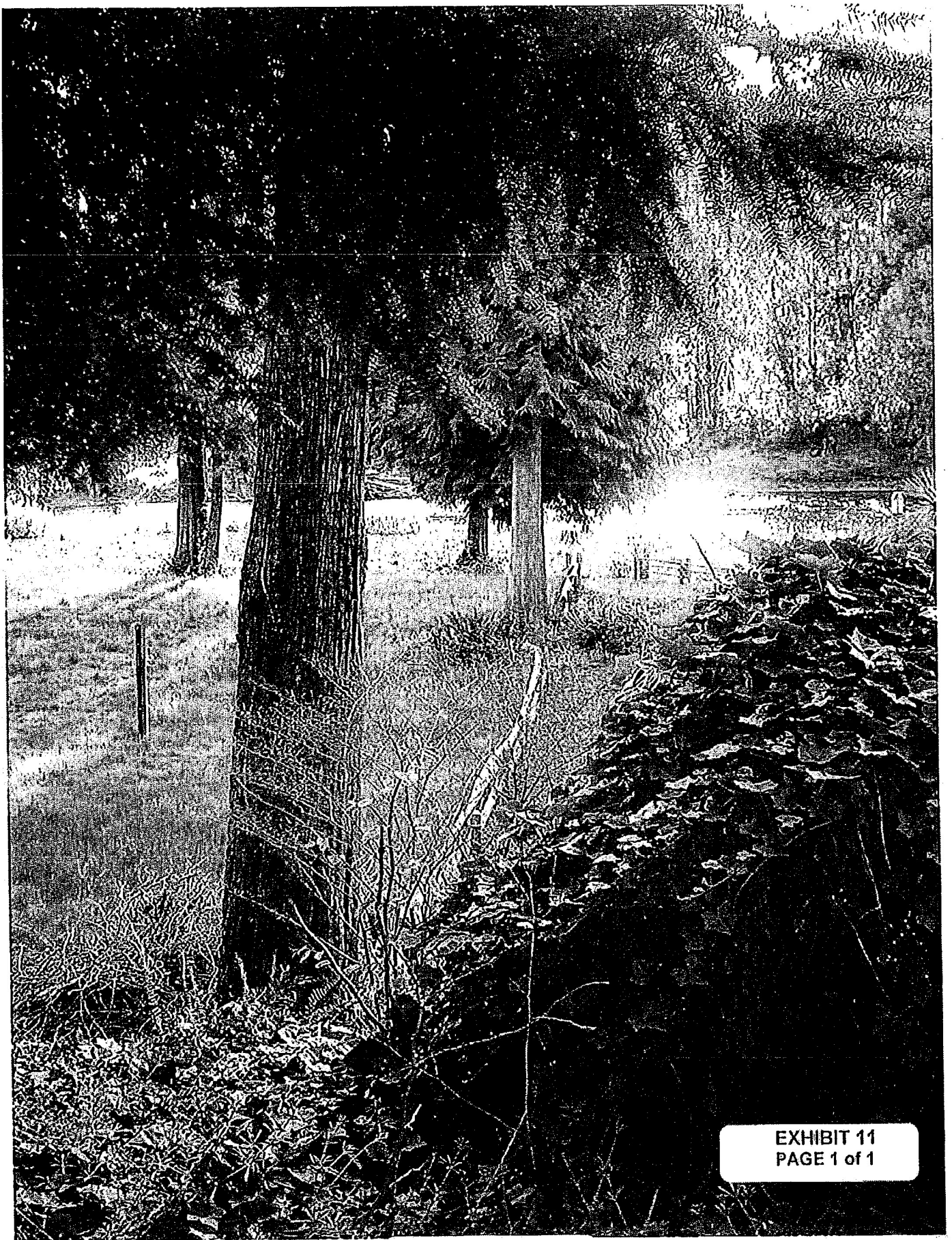


EXHIBIT 11  
PAGE 1 of 1





EXHIBIT 12  
PAGE 1 of 1



EXHIBIT 13  
PAGE 1 of 1





EXHIBIT 14  
PAGE 1 of 1

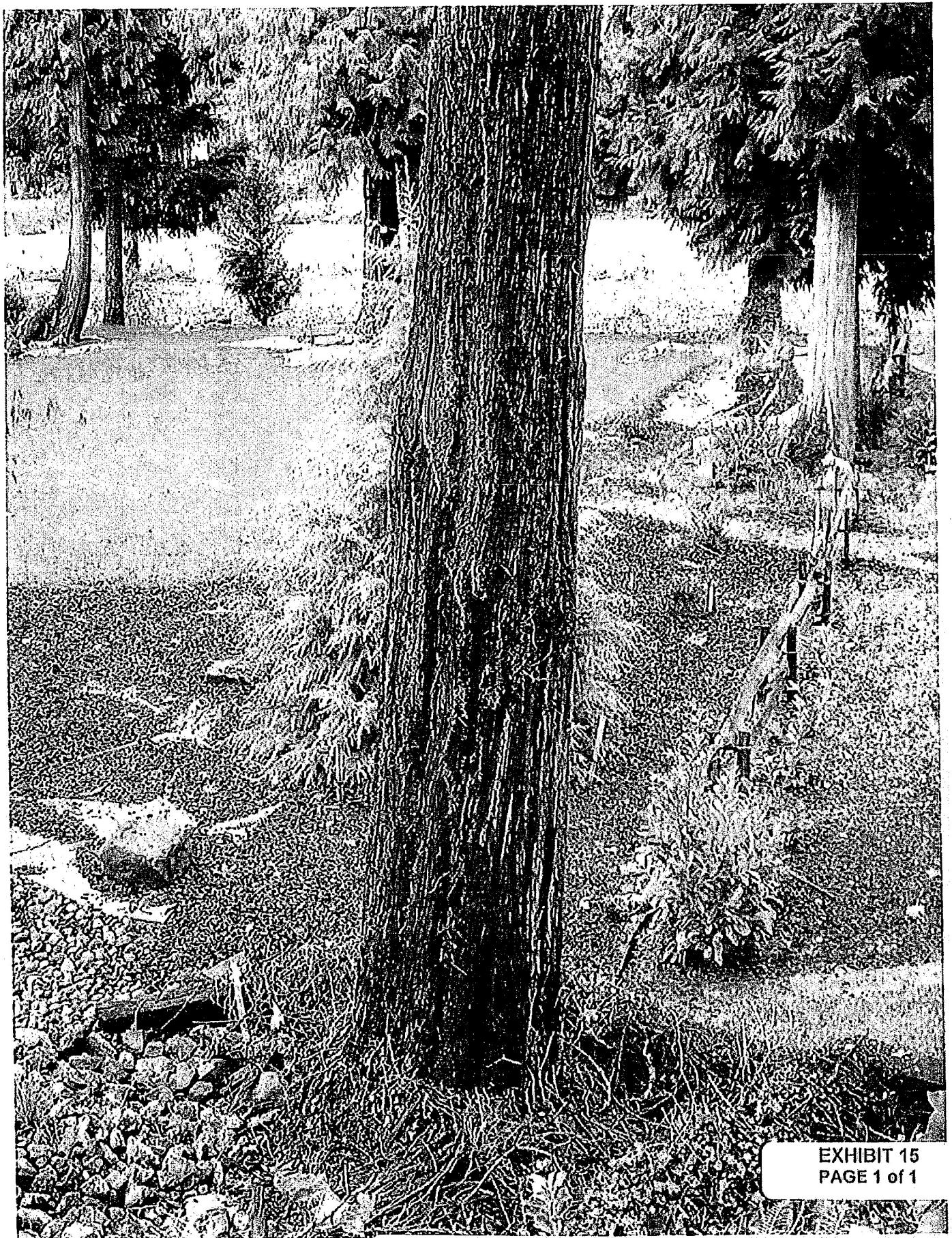


EXHIBIT 15  
PAGE 1 of 1



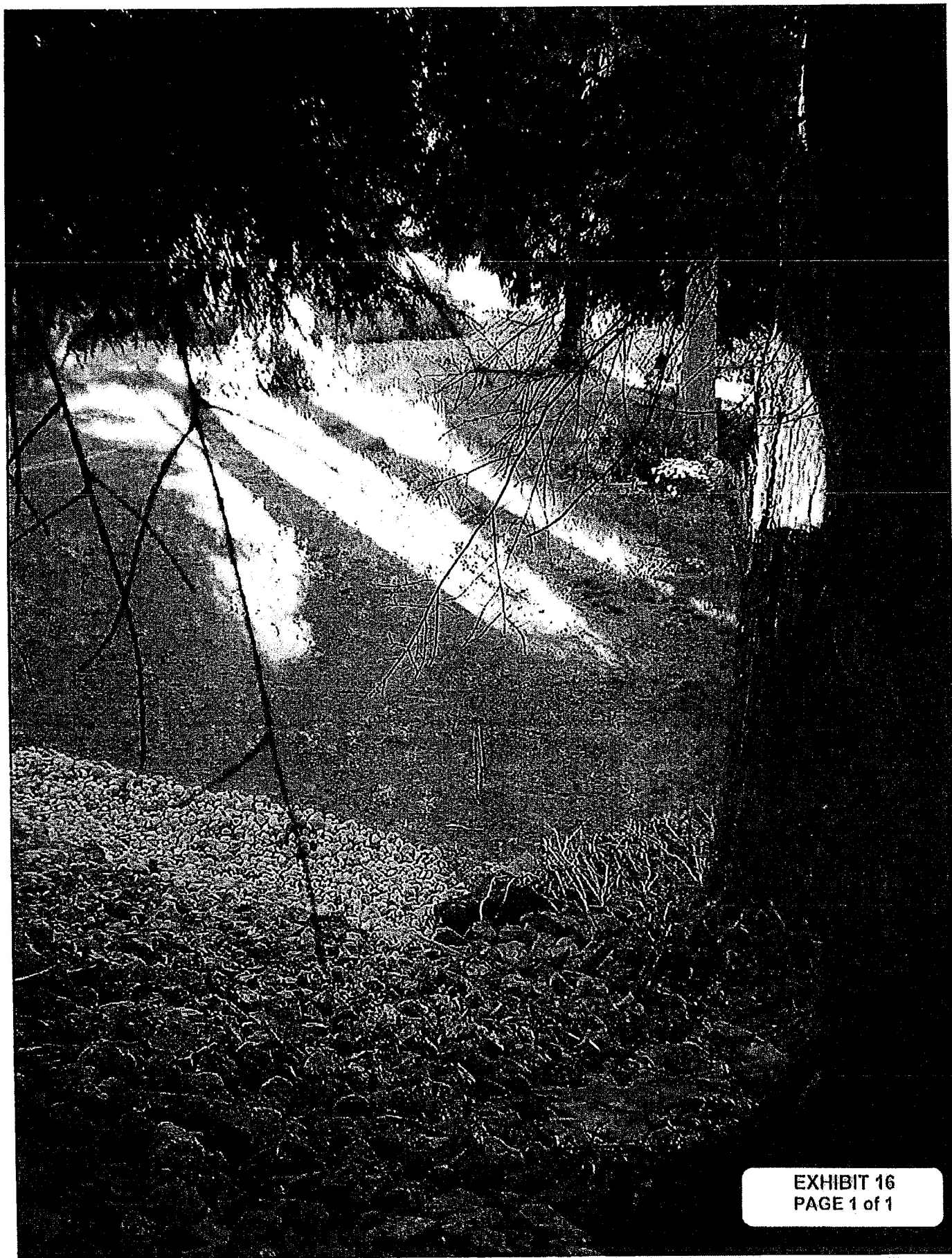


EXHIBIT 16  
PAGE 1 of 1



EXHIBIT 17  
PAGE 1 of 1

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **DECLARATION OF JOHN KUHLMAN**  
**IN SUPPORT OF DEFENDANTS/THIRD-PARTY PLAINTIFFS KUHLMANS'**  
**RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** on the following  
attorneys and parties on the date noted below via the following method:

Matthew J. Andersen Walstead Mertsching PS P.O. Box 1549 Longview, WA 98632-7934 (360) 423-5220 Fax: (360) 423-1478  <i>Of Attorneys for Plaintiffs</i>	Brian H. Wolfe Blair, Schaefer, Hutchison & Wolfe, LLP 105 W. Evergreen Blvd., Suite 200 Vancouver, WA 98660-3123 (360) 693-5883 Fax: (360) 693-1777  <i>Of Attorneys for Defendants Tim Selfridge and Jane Doe Selfridge, and Windermere Real Estate/Stellar Group</i>
Erin M. Stines Bishop, White, & Marshall, P.S. 720 Olive Way, Suite 1301 Seattle, WA 98101-1801 (206) 622-5306 Fax: (206) 622-0354  <i>Of Attorneys for Defendants Chase Bank USA, N.A., and First American Title Insurance Company</i>	Dan I. Carlson and Patricia J. Carlson 899 NW Highland Dr. Waldport, OR 97394  <i>Third-Party Defendants, Pro Se</i>

Method: ☒ US Mail, postage prepaid  
☐ Facsimile  
☐ Hand Delivery  
☐ Overnight Delivery

DATED: January 16, 2009.

**BODYFELT MOUNT LLP**

BY: 

Richard A. Lee, WSBA No. 17537  
Email: [lee@bodyfeltmount.com](mailto:lee@bodyfeltmount.com)  
(503) 243-1022  
Fax: (503) 243-2019

**Of Attorneys for Defendants/Third-Party Plaintiffs  
John Kuhlman and Julie Kuhlman**

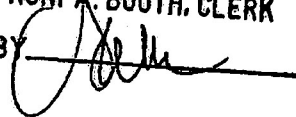
**DECLARATION OF JOHN KUHLMAN IN  
SUPPORT OF RESPONSE TO PLAINTIFFS'  
MOTION FOR SUMMARY JUDGMENT — Page 8**

**BODYFELT MOUNT**  
Attorneys At Law  
707 SW Washington Street, Suite 1100  
Portland OR 97205-3528  
Phone: 503-243-1022 Fax: 503-243-2019

FILED  
SUPERIOR COURT

2009 JAN 22 A 11: 54

COWLITZ COUNTY  
RONI A. BOOTH, CLERK

BY 

SUPERIOR COURT OF WASHINGTON

FOR COWLITZ COUNTY

STEPHEN CHANDLER and KIM O'NEILL,  
husband and wife,

Case No.: 06 2 01922 0

Plaintiffs,

DECLARATION OF TIM SELFRIDGE IN  
CONTRAVENTION OF PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT

vs.

FRANK BISHOP and JANE DOE BISHOP  
husband and wife, JOHN KUHLMAN and  
JANE DOE KUHLMAN, husband and wife,  
TIM SELFRIDGE and JANE DOE  
SELFIDGE, husband and wife, and  
WINDERMERE REAL ESTATE/STELLAR  
GROUP,

Defendants.

I, Tim Selfridge, upon oath declares as follows:

1. I am one of the Defendants in the above-entitled matter. I sign this Declaration in Contravention of Plaintiff's Motion for Summary Judgment and of the facts stated in the Declaration of Steven Chandler
2. I am a licensed real estate agent under the laws of the State of Washington. I am employed by Windermere Real Estate/Stellar Group.
3. I had a Listing Agreement with Frank Bishop, owner of 109 River Glen Terrace, Kalama, Washington starting May 9, 2005. During the term of the Listing Agreement, I showed

DECLARATION OF TIM SELFRIDGE IN  
CONTRAVENTION OF PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT - 1

BRIAN H. WOLFE, P.C.  
Attorney at Law  
105 W. Evergreen Blvd, Suite 200  
Vancouver, Washington 98660  
Telephone (360) 693-5833

Scanned

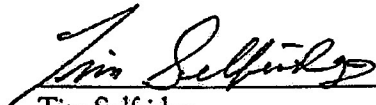
1 the property to Steven Chandler. We both observed a fence, which ran from the Kalama River  
2 to another point, which described a line between the Bishop property and the Kuhlman property.

3 4. At no time did I represent to Mr. Chandler that the fence was the correct  
4 boundary line between the two properties. I told him the Seller said the fence is close to the line  
5 but he should not take that to mean that it is exactly on the line. I advised him that if the  
6 location of the boundary was of concern to him that he should have a survey done by a licensed  
7 surveyor.

8 5. I did not know precisely where the boundary line between the Kuhlman property  
9 and the Bishop property was and so advised Mr. Chandler. I had no knowledge of a property line  
10 dispute between Mr. Bishop and Mr. Kuhlman prior to the sale.

11 6. Attached hereto is a copy of the Seller's Disclosure Statement as required by  
12 RCW 64.06 completed by Frank and Susan Bishop and provided to Steven Chandler and Kim  
13 O'Neill.

14 I declare under penalty of perjury under the laws of the State of Washington that the  
15 foregoing is true and correct. Signed in Vancouver, Washington on January 20, 2009.

16  
17   
18 Tim Selfridge



SELLER DISCLOSURE STATEMENT†

SELLER: Frank & Suzanne Bishop

† To be used in transfers of residential real property, including multi-family dwellings up to four units; new construction; condominiums not subject to a public offering statement, certain timeshares, and manufactured and mobile homes. See RCW Chapter 64.06 and Section 43.22.432 for further explanations.

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any asterisked (\*) item(s), please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and initial each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five (5) business days, unless otherwise agreed, after mutual acceptance of a written purchase and sale agreement between Buyer and Seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT

109 River Glen Terrace

CITY KALAMA, COUNTY Cowlitz ("THE PROPERTY")

OR AS LEGALLY DESCRIBED ON THE ATTACHED EXHIBIT A. SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A PURCHASE AND SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller ☒ is / ☐ is not occupying the property.

I. SELLER'S DISCLOSURES:

\* If you answer "Yes" to a question with an asterisk (\*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

1. TITLE

A. Do you have legal authority to sell the property? If not, please explain.

YES NO DON'T KNOW

☒ ☐ ☐

\*B. Is title to the property subject to any of the following?

(1) First right of refusal

☐ ☒ ☐

(2) Option

☐ ☒ ☐

(3) Lease or rental agreement

☐ ☒ ☐

(4) Life estate

☐ ☒ ☐

\*C. Are there any encroachments, boundary agreements, or boundary disputes?

☐ ☒ ☐

\*D. Are there any rights of way, easements, or access limitations that may affect Buyer's use of the property?

☐ ☒ ☐

\*E. Are there any written agreements for joint maintenance of an easement or right of way? Road

☒ ☐ ☐

\*F. Is there any study, survey project, or notice that would adversely affect the property?

☐ ☒ ☐

\*G. Are there any pending or existing assessments against the property?

☐ ☒ ☐

\*H. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?

☐ ☒ ☐

\*I. Is there a boundary survey for the property?

☒ ☐ ☐

\*J. Are there any covenants, conditions, or restrictions which affect the property?

☐ ☒ ☐

PLEASE NOTE: Covenants, conditions, and restrictions which purport to forbid or restrict the conveyance, encumbrance, occupancy, or lease of real property to individuals based on race, creed, color, sex, national origin, familial status, or disability are void, unenforceable, and illegal. RCW 49.60.224.

SELLER'S INITIALS: FB

DATE: 5/9/05

SELLER'S INITIALS: SB

DATE: 5/9/05

BHW0011



SELLER DISCLOSURE STATEMENT

2. WATER

A. Household Water

- (1) The source of water for the property is: ☐ Private or publicly owned water system  
☐ Private well serving only the subject property \* ☒ Other water system  
\*If shared, are there any written agreements?

- \*(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?

- \*(3) Are there any known problems or repairs needed?

- (4) During your ownership, has the source provided an adequate year round supply of potable water?

If no, please explain: \_\_\_\_\_

- \*(5) Are there any water treatment systems for the property?

If yes, are they: ☐ Leased ☐ Owned

B. Irrigation

- (1) Are there any water rights for the property, such as a water right, permit, certificate, or claim?

- \*(a) If yes, have the water rights been used during the last five-years?

- \*(b) If so, is the certificate available?

C. Outdoor Sprinkler System

- (1) Is there an outdoor sprinkler system for the property?

- \*(2) If yes, are there any defects in the system?

- \*(3) If yes, is the sprinkler system connected to irrigation water?

YES	NO	DON'T KNOW	
			57
			58
			59
			60
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	61
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	62
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	63
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	64
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	65
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	66
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	67
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	68
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	69
			70
			71
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	72
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	73
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	74
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	75
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	76
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	77
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	78
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	79

3. SEWER/ON-SITE SEWAGE SYSTEM

A. The property is served by:

- ☐ Public sewer system ☒ On-site sewage system (including pipes, tanks, drainfields, and all other component parts) *From well F&B*  
☐ Other disposal system

Please describe: \_\_\_\_\_

- B. If public sewer system service is available to the property, is the house connected to the sewer main?

If no, please explain: *NO SEWER SYSTEM AVAILABLE*

- C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

- D. If the property is connected to an on-site sewage system:

- \*(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?

- (2) When was it last pumped? *1996*

- \*(3) Are there any defects in the operation of the on-site sewage system?

- (4) When was it last inspected? *1996*

By whom: \_\_\_\_\_

- (5) For how many bedrooms was the on-site sewage system approved? *3* bedrooms

- E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system?

If no, please explain: \_\_\_\_\_

- \*F. Have there been any changes or repairs to the on-site sewage system?

- G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property?

If no, please explain: \_\_\_\_\_

- H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year?

If yes, please explain: \_\_\_\_\_

			80
			81
			82
			83
			84
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	85
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	86
			87
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	88
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	89
			90
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	91
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	92
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		<input checked="" type="checkbox"/>	95
			96
		<input type="checkbox"/>	97
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	98
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	99
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<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	103
			104
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	105
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	106
			107

SELLER'S INITIALS: *F&B*

DATE: *5/9/07*

2

SELLER'S INITIALS: *F&B*

DATE: *5/9/07*

BHW0012

### SELLER DISCLOSURE STATEMENT

NOTICE: IF THIS SELLER DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4 (STRUCTURAL) OR ITEM 5 (SYSTEMS AND FIXTURES).

#### 4. STRUCTURAL

\*A. Has the roof leaked?

YES NO DON'T KNOW

~~\*B. Has the basement flooded or leaked?~~ N/A

\*C. Have there been any conversions, additions or remodeling?

\*(1) If yes, were all building permits obtained? N/A

\*(2) If yes, were all final inspections obtained? N/A

D. Do you know the age of the house?

If yes, year of original construction: JUNE 2, 1974

\*E. Has there been any settling, slippage, or sliding of the property or its improvements?

\*F. Are there any defects with the following: (If yes, please check applicable items and explain.)

- |  |   |   |
|--|---|---|
| <input type="checkbox"/> Foundations   | <input type="checkbox"/> Decks          | <input type="checkbox"/> Exterior Walls |
| <input type="checkbox"/> Chimneys      | <input type="checkbox"/> Interior Walls | <input type="checkbox"/> Fire Alarms    |
| <input type="checkbox"/> Doors         | <input type="checkbox"/> Windows        | <input type="checkbox"/> Patios         |
| <input type="checkbox"/> Ceilings      | <input type="checkbox"/> Slab Floors    | <input type="checkbox"/> Driveways      |
| <input type="checkbox"/> Pools         | <input type="checkbox"/> Hot Tub        | <input type="checkbox"/> Sauna          |
| <input type="checkbox"/> Sidewalks     | <input type="checkbox"/> Outbuildings   | <input type="checkbox"/> Fireplaces     |
| <input type="checkbox"/> Garage Floors | <input type="checkbox"/> Walkways       | <input type="checkbox"/> Wood Stoves    |
| <input type="checkbox"/> Siding        | <input type="checkbox"/> Other          |   |

\*G. Was a structural pest or "whole house" inspection done? 1985

If yes, when and by whom was the inspection completed? 1985 - ~~Don't know~~ Killers Janco WA

\*H. During your ownership, has the property had any wood destroying organisms or pest infestations?

I. Is the attic insulated?

J. Is the basement insulated?

#### 5. SYSTEMS AND FIXTURES

\*A. If any of the following systems or fixtures are included with the transfer, are there any defects?

If yes, please explain:

Electrical system, including wiring, switches, outlets, and service

Plumbing system, including pipes, faucets, fixtures, and toilets

Hot water tank

Garbage disposal N/A

Appliances

Sump pump N/A

Heating and cooling systems

Security system ☐ Leased ☐ Owned

Other:

\*B. If any of the following fixtures or property are included with the transfer, are they leased? (If yes, please attach copy of lease.)

Security System

Tanks (type):

Satellite dish

Other: 2 Dishies - one for portland, one for dish Network

SELLER'S INITIALS: *[Signature]*

DATE: 5/9/05

SELLER'S INITIALS: *[Signature]*

DATE: 5/9/05

# SELLER DISCLOSURE STATEMENT

© Copyright 2005  
Northwest Multiple Listing Service  
ALL RIGHTS RESERVED

## 6. COMMON INTERESTS

A. Is there a Home Owners' Association?

Name of Association \_\_\_\_\_

B. Are there regular periodic assessments?

\$ \_\_\_\_\_ per ☐ month ☐ years

☐ Other: \_\_\_\_\_

\*C. Are there any pending special assessments?

\*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences; landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

## 7. GENERAL

\*A. Have there been any drainage problems on the property?

\*B. Does the property contain fill material?

\*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

D. Is the property in a designated flood plain? *Flood INS NOT REQUIRED*

E. Has the local (city or county) planning agency designated your property as a "frequently flooded area"?

\*F. Are there any substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

\*G. Are there any tanks or underground storage tanks (e.g., chemical, fuel, etc.) on the property?

\*H. Has the property ever been used as an illegal drug manufacturing site?

\*I. Are there any radio towers in the area that may cause interference with telephone reception?

## 8. LEAD BASED PAINT (Applicable if the house was built before 1978.)

A. Presence of lead-based paint and/or lead-based paint hazards (check one below):

☐ Known lead-based paint and/or lead-based paint hazards are present in the housing

(explain): \_\_\_\_\_

☒ Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

B. Records and reports available to the Seller (check one below):

☐ Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

*We Built The House NO lead paint has been used.*

☐ Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

## 9. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

\*A. Did you make any alterations to the home?

If yes, please describe the alterations: *N/A*

\*B. Did any previous owner make any alterations to the home?

If yes, please describe the alterations: \_\_\_\_\_

\*C. If alterations were made, were permits or variances for these alterations obtained?

## 10. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

\*Are there any other existing material defects affecting the property that a prospective buyer should know about?

YES	NO	DON'T KNOW	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	156
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	157
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	158
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	159
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	160
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	197
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<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	200
			201

SELLER'S INITIALS *[Signature]*

DATE: *5/9/05*

SELLER'S INITIALS *[Signature]*

DATE: *5/9/05*

BHW0014

SELLER DISCLOSURE STATEMENT

B. Verification

The foregoing answers and attached explanations (if any) are complete and correct to the best of Seller's knowledge and Seller has received a copy hereof. Seller agrees to defend, indemnify and hold real estate licensees harmless from and against any and all claims that the above information is inaccurate. Seller authorizes real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the Property.

Date: May 9, 2005

Date: 5/9/05

Seller: [Signature]

Seller: [Signature]

NOTICE TO THE BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGEMENT

Buyer hereby acknowledges that:

- Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- Buyer acknowledges that, pursuant to RCW 64.06.050 (2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- This information is for disclosure only and is not intended to be a part of the written agreement between Buyer and Seller.
- Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature(s).
- If the house was built prior to 1978, Buyer acknowledges receipt of the pamphlet *Protect Your Family From Lead in Your Home*.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE: \_\_\_\_\_ DATE: \_\_\_\_\_

BUYER: \_\_\_\_\_ BUYER: \_\_\_\_\_

BUYER'S WAIVER OF RIGHT TO REVOKE OFFER

Buyer has read and reviewed the Seller's responses to this Seller Disclosure Statement. Buyer approves this statement and waives Buyer's right to revoke Buyer's offer based on this disclosure.

DATE: \_\_\_\_\_ DATE: \_\_\_\_\_

BUYER: \_\_\_\_\_ BUYER: \_\_\_\_\_

BUYER'S WAIVER OF RIGHT TO RECEIVE COMPLETED SELLER DISCLOSURE STATEMENT

Buyer has been advised of Buyer's right to receive a completed Seller Disclosure Statement. Buyer waives that right.

DATE: \_\_\_\_\_ DATE: \_\_\_\_\_

BUYER: \_\_\_\_\_ BUYER: \_\_\_\_\_

If the answer is "Yes" to any asterisked (\*) items, please explain below (use additional sheets if necessary). Please refer to the line number(s) of the question(s).

IN 1985 The old deck had Carpenter Ants - we had the deck & under house sprayed  
to remove to the house. The deck was replaced in 2000. We have a 1/2 Agreement  
w/ the Neighbor. our well is used for outside water the N well is used for indoor  
Both wells can be used separately. New agreement would need to be signed by both parties.  
Read maintenance agreement also mandatory for new owner to sign.

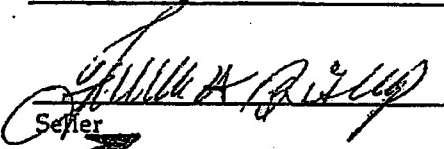
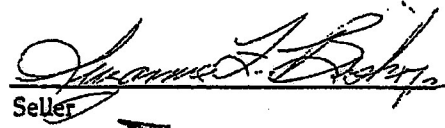
SELLER'S INITIALS: [Signature] DATE: 5/9/05

SELLER'S INITIALS: [Signature] DATE: 5/9/05

# SELLER'S DISCLOSURE ADDENDUM

- |   | Yes                      | No                                  | Don't Know               |
|---|--------------------------|-------------------------------------|--------------------------|
| 1. Is the structure sided with Oriented Strand Board Siding or any other manufactured composite siding? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. If yes, have you had the siding inspected? (Attach a copy of any report received.)                   | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| 3. If yes to question #1, do you have a copy of the warranty?   | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |
| 4. If yes to question #1, have you made a warranty claim or participated in any claim process?          | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> |

Explain:


5/9/05

5/9/05  
 Seller Date Buyer Date

## Acknowledgment of Receipt

Buyer hereby acknowledges receipt of this Addendum and acknowledges that the disclosures made in this Addendum are made by the Seller only, and not by any real estate licensee or other party.

Buyer

Date

Buyer

Date

## Waiver of Right to Revoke Offer

Buyer has read the Seller's disclosures set forth in this Addendum and hereby waives the right to revoke Buyer's Offer based on disclosures made in this Addendum. This waiver shall not affect any other contractual or legal right Buyer may have.

Buyer

Date

Buyer

Date

SDA 9/95

Windermere

BHW0010

**PROOF OF FILING AND SERVICE**

I certify that on December 23, 2009, I filed the original and one copy of **APPELLANTS' OPENING BRIEF** with the Court of Appeals, Division II by United States Postal Service certified mail at the following address:

Court of Appeals : Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402

FILED  
COURT OF APPEALS  
DIVISION II  
09 DEC 28 AM 11:21  
STATE OF WASHINGTON  
BY DEB DEPUTY

I further certify that on December 23, 2009, I served a copy of the **APPELLANTS' OPENING BRIEF** by United States Postal Service first-class mail on the following parties at these addresses:

<p>Matthew J. Andersen Walstead Mertsching PS P.O. Box 1549 Longview, WA 98632-7934 T. 360.423.5220/F. 360.423.1478 <a href="mailto:mjandersen@walstead.com">mjandersen@walstead.com</a></p> <p><i>Of Attorneys for Plaintiffs</i></p>	<p>David A. Nelson Nelson Law Firm, PLLC 1516 Hudson Street, Suite 204 Longview, WA 98632 T. 360.425.9400/F. 360.425.1344 <a href="mailto:david@lighthouselaw.com">david@lighthouselaw.com</a></p> <p><i>Of Attorneys for Respondent Third-Party Defendants</i></p>
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<p>Brian H. Wolfe  Blair, Schaefer, Hutchison &amp;  Wolfe, LLP  105 W Evergreen Blvd., Ste 200  Vancouver, WA 98660-3123  T. 360.693.5883/F. 360.693.1777  <b><u>bwolfe@bhw-law.com</u></b></p> <p><i>Of Attorneys for Defendants Tim  Selfridge and Jane Doe Selfridge,  and Windermere Real Estate/Stellar  Group</i></p>	<p>Erin M. Stines  Bishop, White, &amp; Marshall, P.S.  720 Olive Way, Suite 1301  Seattle, WA 98101-1801  T. 206.622.5306/F. 206.622.0354  <b><u>estines@bwmlegal.com</u></b></p> <p><i>Of Attorneys for Defendants Chase  Bank USA, N.A., and First  American Title Insurance Company</i></p>
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Method:

☒  
☐  
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US Mail, postage prepaid  
Facsimile  
Hand Delivery  
Overnight Delivery

Dated this 23<sup>rd</sup> day of December, 2009.

**BODYFELT MOUNT LLP**



Deanna L. Wray, WSBA No. 33358  
**wray@bodyfeltmount.com**  
Pamela J. Stendahl, WSBA No. 25609  
**stendahl@bodyfeltmount.com**  
T. 503.243.1022/F. 503.243.2019

Of Attorneys for Appellants John Kuhlman and  
Julie Kuhlman